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VOLUME V

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 306

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, APPELLANT,

vs.

UNITED STATES, ET AL.

No. 307

EZRA TAFT BENSON, SECRETARY OF AGRICULTURE OF THE UNITED STATES, APPELLANT,

vs.

UNITED STATES, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

FILED AUGUST 9, 1960
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APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

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Transcript of Proceedings—April 6, 1955

Exam. Dishman: The hearing will come to order, gentlemen.

Mr. Musenbrock.

Mr. Musenbrock: If the Commissioner please, I would like to put in my appearance for the defendant Minneapolis and St. Louis Railway Company.

My name is Richard Musenbrock. I am an attorney admitted to practice before this Commission. My address is 111 East Franklin, Minneapolis, Minnesota.

Exam. Dishman: And you have appeared in prior hearings?

Mr. Musenbrock: I have appeared at Chicago and at Portland.

J. H. Poore was sworn and testified as follows:

Direct examination.

By Mr. Golden:

Q. Would you state your name, residence, and occupation?

A. J. H. Poore, St. Paul, Minnesota; vice president and assistant to the president of the Northern Pacific Railway.

Q. Would you tell us briefly, Mr. Poore, what your railroad experience has been?

A. I commenced working for the Northern Pacific on May 1, 1907, in the accounting department. In July 1907 I worked in the land department. In January 1910 I moved to the right-of-way department. January 1, 1918, I became land assistant in charge of federal valuation of company lands, and during the next two or three years I also did [fol. 2626] considerable executive department work.

On December 1, 1920, I became executive assistant in the Northern Pacific in the executive department, and on January 22, 1948, I became vice president and assistant to the president.

Q. Are you now or have you ever been an officer of the S. P. and S. or any of its subsidiaries?

A. Yes, for a very short period. In 1949 I was appointed a vice president of the S. P. and S. for the purpose of receiving bids under the equipment trust. They didn't keep me very long.

Q. And you are not now an officer of any of those companies?

A. No.

Q. During the period of your employment with the Northern Pacific have you had an opportunity to become familiar with the history of the company?

A. Yes. In the land department and again in the right-of-way department I became familiar with the charter provisions and the land grant provisions contained in the granting charter of the Northern Pacific, July 2, 1864.

Q. Would you please give us sort of a brief rundown on the history of the construction of the Northern Pacific, particularly west of Spokane and its association with the Great Northern in the construction of the S. P. and S.?

Mr. Maguire: Just a moment. Might I have that question read, please?

[fol. 2627] (Question read.)

Mr. Maguire: Mr. Examiner, I know that this question is a rather all inclusive one which gives the witness free rein in the matter of giving an extended statement.

I desire at this time to request that the witness be cautioned to restrict his answer to factual recitals rather than recitals of questions of policy or intentions of the Northern Pacific or any of its associates. The same ruling as was made with regard to the other witnesses yesterday.

Exam. Dishman: Yes, the same ruling as made yesterday in connection with the testimony of witness Budd, I believe.

A. The Northern Pacific line was constructed by the Northern Pacific Railroad Company, predecessor company. It was chartered by an Act of Congress, July 2, 1864, and amendatory Acts, to build a main line from Lake Superior to Puget Sound by Columbia River Gorge and Portland with a branch line from a point on the Columbia River about the present location of Pasco. That would go to the Puget Sound over the Cascades, the branch line.

The line was completed in 1883 to Wallula, and by that time the Northern Pacific had also constructed a line from Tacoma to Portland which was completed in 1883. The entire line, therefore, was in operation from Lake Superior to the Puget Sound by use of the Northern Pacific line to Wallula, by use of the O.R.&N. later the Union Pacific line from Wallula to Portland, and from Portland to Tacoma via the Northern Pacific's own line.

[fol. 2628] By 1884 the Northern Pacific had constructed a line from Tacoma to Seattle and up to that time, and, in fact, until 1887, all business for the Northern Pacific for the Pacific Coast was handled by that route. The Northern Pacific branch line over the Cascades was completed in 1887, and it connected with the Tacoma-Seattle line to what is now the town of Albany. Under its charter the Northern Pacific had the right to build a line down the Columbia River from about where Pasco is to Portland. It did not do so originally because it—

Mr. Maguire (interrupting): Just a moment. Pardon me for the interruption, Mr. Poore.

The witness is starting to say why something was not done, and I do not believe that is admissible under the instructions of the Examiner, the ruling of the Examiner.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

(Answer read as follows: "Under its charter the Northern Pacific had the right to build a line down the Columbia River from about where Pasco is to Portland. It did not do so originally because it—".)

A. (Continuing) —had made a connection with the O.R.&N. Company at Wallula, and its business for Portland was then handled over the O.R.&N., later the Union Pacific.

[fol. 2629] Mr. Maguire: May I interrupt you a moment? Could I go off the record just a second?

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

Proceed.

Mr. Golden: Perhaps I can speed this up a little bit by asking some more specific questions at this time.

By Mr. Golden:

Q. Did the Northern Pacific ever build under its charter between Wallula or that general vicinity and Portland?

A. No.

Q. Did it build in any fashion a railroad in that territory?

Mr. Maguire: Just a minute. I think on that, that is a maneuver. The question is a loaded question, because I know what it is going to lead to, that counsel is going to try to inject into the record a conclusion of the witness as to whether or not the building of the S. P. and S. was an action of the Northern Pacific, and if that is the case that would be a conclusion and where the facts will speak for themselves, the organization of the S. P. and S. and so on, so I object to that question.

Exam. Dishman: Would you re-frame your question, Mr. Golden?

Mr. Golden: The question is framed, Mr. Examiner, to ask for a specific factual answer of the witness. He can answer it yes or no.

[fol. 2630] Mr. Maguire: It calls for a conclusion of the witness because I know what the facts are and Mr. Golden knows as well, and that undoubtedly will call for a conclusion of the witness, a legal conclusion drawn from the transactions, which I want to avoid getting into this record.

Mr. Golden: Mr. Examiner, it is a factual question as to whether or not a railroad was built.

Exam. Dishman: What railroad are you speaking about?

Mr. Golden: I am speaking about the S. P. and S. railroad.

Exam. Dishman: Can't you ask him direct questions about that railroad?

By Mr. Golden:

Q. Mr. Poore, within the territory in which the Northern Pacific had a charter right to construct a railroad did it in that area participate in the building of a railroad?

A. Yes. It joined with the Great Northern in the organization of the Portland-Seattle Railway Company, later the Spokane-Seattle Railway Company, for the construction of a line from Spokane via Pasco along the north bank of the Columbia River to Portland.

Q. Are you familiar with that territory?

A. Yes.

Q. Could you say whether or not there is room for the construction of two railroads in that area?

A. There is not room for the construction of two rail- [fol. 2631] roads through the Columbia gorge through which the Spokane, Portland, and Seattle line passes.

Q. By whom was the construction of the S. P. and S. carried out?

A. I beg your pardon?

Q. By what railroads was the construction of the S. P. and S. carried on?

Mr. Maguire: Just a moment. That is again calling for a conclusion. Now, we know from the witness's answer that the Great Northern and the Northern Pacific joined in the organization of the Portland and Seattle Railroad. Now, that railroad undoubtedly is the one that built the line, that corporation, so this question of counsel's is again trying to get in the side door by insinuating.

Exam. Dishman: Isn't that the answer?

The Witness: It is not the answer.

Mr. Golden: Let me ask him another question.

By Mr. Golden:

Q. Whose engineers constructed the S. P. and S.?

A. The engineers of the S. P. and S. and the surveys were made by the Northern Pacific Railway Company, and later the Great Northern engineers, before the construction was started, participated with Northern Pacific engineers, and the Northern Pacific actually started the con-

struction of the S. P. and S. line and financial settlements were made later after the S. P. and S. were actually or-
[fol. 2632] ganized to reimburse the Northern Pacific for moneys it had spent on construction of the S. P. and S. line.

Q. In what year was the S. P. and S. completed and placed in operation?

A. 1909.

Q. What about the Oregon Trunk and the Oregon Electric, when were they acquired and for what purpose?

A. The Oregon Trunk—

Mr. Maguire (interrupting): Pardon me, Mr. Poore.

I object to that part of the question which states for what purpose.

Mr. Golden: I will withdraw that part of the question at this time.

Mr. Maguire: All right.

By Mr. Golden:

Q. The question is when were the Oregon Electric and Oregon Trunk acquired?

A. The Oregon Trunk was constructed by the S. P. and S. in 1910 and the Oregon Electric was acquired by the S. P. and S. in that same year.

Q. Do you have before you a copy of the Northern Pacific's annual report to stockholders in the year 1910?

A. I do.

Mr. Maguire: Before anything is read out of that, may I have a look at it?

[fol. 2633] The Witness: Yes, right here (indicating).

By Mr. Golden:

Q. Is the Northern Pacific's report to stockholders a record which is prepared annually?

A. Yes.

Q. And furnished to all of the stockholders of the company?

A. Yes.

Q. Would you please read the three paragraphs, commencing with "during the year" on Page 18 of that report?

Mr. Maguire: Just a moment, Mr. Poore, before you start.

Mr. Examiner, I have examined the three paragraphs in question, which were kindly indicated to me by Mr. Poore, and I object to them upon the ground that they are self-serving declarations of one of the parties, of the intervenors in this case. It is a statement of purpose and can have no bearing whatever upon the question which is here at issue, namely, whether the Northern Pacific and the Great Northern are entitled to protection as lines under common ownership, management, or control under Section 15(4) of the Act.

This is merely a self-serving declaration that appears here in the annual report. It is not a report to the Interstate Commerce Commission. It is a private report although it may be given wide publication, and it therefore is a self-serving declaration so far as this proceeding is concerned.

I think perhaps if counsel would show you the paragraphs in question you will see what I have in mind.

[fol. 2634] Mr. Golden: Mr. Examiner, the report to stockholders is a business record which is made in the normal course of business. It was made long before this case ever arose. It therefore under no circumstances could be considered a self-serving declaration as applied to this case.

Mr. Maguire: I think that it could very well be regarded as a self-serving declaration, even under counsel's statement, because I think that undoubtedly the Northern Pacific and the Great Northern have wished over the years to give an impression of exclusive rights so far as the S. P. and S. is concerned, and I believe this would still be a self-serving declaration.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

In view of the fact that Mr. Maguire does not now object to this material which the witness has read off the record from the report to the stockholders of what date?

The Witness: 1910, June 1910.

Exam. Dishman: It will be made a part of the record.

"During the year attention has been given to the development of business in Oregon. The Oregon Trunk Railway Company is now building a line of road from a point near Clarke, Washington, on the Spokane, Portland & Seattle Railway, southwardly across the Columbia River and up the Des Chutes Valley to Bend, Oregon, a distance of 156 miles. This road will furnish communication be-
[fol. 2635] tween the great central plateau of Oregon and the outside world.

"The capital stock of the Oregon Electric Railway Company, which owns valuable rights and terminals in Portland, and completed lines south and west of Portland to Salem, Hillsboro and Cornelius, and of the United Railways Company which has valuable terminals and rights in and about Portland, and a line partly completed into the counties of Columbia, Clatsop and Tillamook, have been acquired.

"These three enterprises, in connection with the Spokane, Portland & Seattle Railway, will enable your company to participate in the business of Central Oregon and south and west of Portland."

Exam. Dishman: All right, proceed.

By Mr. Golden:

Q. Mr. Poore, commencing with in the year in which you became executive assistant to the Northern Pacific would you give some examples of the participation of the executives of the Northern Pacific in the management of the S. P. and S. affairs, and I would like to say, if you have any comments about any of the prior testimony or examples which have been put in by preceding witnesses, I wish you would make those as you go along.

Mr. Maguire: You are asking for comments that are within Mr. Poore's personal knowledge?

Mr. Golden: Within his personal knowledge.

Mr. Maguire: Thank you.

[fol. 2636] A. One of the first things that happened after I formally became a member of the executive department of the Northern Pacific was a change in the rates charged for use of properties by the S.P.&S. or Northern Pacific or Great Northern or Great Northern and Northern Pacific of S. P. and S. properties, rates that had been in existence in the main since 1908 or 1909 were then by agreement between Northern Pacific and Great Northern officers increased 50 per cent without any participation by S. P. and S. officers, although the use of their property, the S. P. and S. property, was involved in a number of these cases.

Mr. Maguire: Could I ask for clarification, Mr. Poore? You were paying the S. P. and S. 50 per cent more than you had in the past?

The Witness: That is right, and we arbitrarily increased the rates for all of these contracts then existent by 50 per cent.

Mr. Maguire: That was an arbitrary?

The Witness: That was an arbitrary.

By Mr. Golden:

Q. Also for clarification at this time, that would also include rates that were paid by the S. P. and S. to the parent lines?

A. Oh, yes. I thought I covered that. It included all rates under joint facility contracts that were in existence in 1920 where flat rates were named, were arbitrarily increased 50 per cent and by agreement between Great Northern and Northern Pacific officers.

[fol. 2637] Both Mr. Hart and Mr. Budd mentioned the 1927 contracts when the S. P. and S. and Oregon Trunk were giving the Great Northern access to the line south of Bend and going on to California.

In the negotiation of those contracts there was no participation by the S. P. and S. in any way. The contracts were made in St. Paul and were actually signed by the then president of the S. P. and S., but he was just told to sign them.

During the period subsequent to the execution of those contracts there have been a great many instances where

clarification or interpretation was needed and invariably those interpretations, clarifications, were made in St. Paul and upon agreement reached by officers of the two parent lines without any discussion at all with S. P. and S. officers.

In 1947 the Great Northern put on a fast train, fast passenger train, service between the Twin Cities, between Chicago and the Pacific Coast. That involved an additional train for the S. P. and S. between Spokane and Portland. The Northern Pacific was not willing to have that service furnished by the S. P. and S. at its own cost and an agreement was reached in St. Paul as to the terms on which that train would be operated by the S. P. and S.

Those which were given by Mr. Budd and by Mr. Hart and this one about the train are instances where one company or the other was directly interested apart from its interest as a stockholder of the S. P. and S. Railway Company.

[fol. 2638] One other instance that was mentioned by Mr. Hart, and that is the contract with the Union Pacific for the abandonment of the north 75 miles of its line between Bend and The Dalles. That contract was entered into in 1935 or became effective in 1935. There was no S. P. and S. participation in the negotiations leading up to that contract although it involved the use of 75 miles of Oregon—I should have said Oregon Trunk there, actually Oregon Trunk is the title—no participation by Oregon Trunk officers in that contract, and, in fact, they were handled by Mr. D. C. Kerr of the Great Northern who was then assistant to the operating vice president, Mr. J. L. Haugh who was then a vice president of the Union Pacific, and myself of the Northern Pacific.

The only thing furnished by the S. P. and S. in connection with that contract were some blue print exhibits made by the chief engineer of the S. P. and S. and some cost data furnished by the comptroller of the S. P. and S. The contracts were actually drawn up, signed in St. Paul, and sent to Portland to be followed by the S. P. and S. officers.

Q. May I interrupt, Mr. Poore? In one of your qualifying statements there as to the examples which have been given by Mr. Hart and Mr. Budd, you referred to all of the examples.

Did you mean all the examples that they gave or those you referred to?

A. No, those I referred to only, the 1927 contract, just [fol. 2639] those two. It is really just the '27 contract. They referred only in their testimony to what happened at the time the contracts were made. I was trying to show that following the period of the discussion of the contracts all interpretations and clarifications of those contracts have been handled in St. Paul without reference to S. P. and S. officers.

Q. Would you proceed?

A. Mr. Hart and Mr. Budd also mentioned the acquisition of timber in northern Oregon by the Ruth Realty Company in 1930. I would like to add a little to what they said there.

This matter had been under consideration for some time but was first presented to the Northern Pacific Board on July 24, 1929, at which time the Great Northern president and three members of his Board met with the N.P. Boards for a full discussion. On May 28, 1930, the Northern Pacific Board authorized completion with Great Northern concurrence on the acquisition of this timber. The Great Northern had taken similar action.

Q. You have spoken, Mr. Poore, about some rather major changes which have come about which originated in St. Paul. Has it been your observation that that has been a frequent occurrence?

A. My observation has been that all of the major changes or acquisitions of property have originated in St. Paul and seldom, if ever, by S. P. and S. officers. And in the negotiations that would follow, if it were with outsiders for the acquisition of property or for the construction of branch [fol. 2640] lines, there has been little, if any, participation by S. P. and S. officers.

Mr. Maguire: You mean exclusive S. P. and S. officers, do you not, Mr. Poore?

The Witness: Yes. The only two other officers are the two presidents from year to year.

Mr. Maguire: Yes, they are officers of the S. P. and S., and you are not excluding them?

The Witness: They are the only officers of S. P. and S.

Exam. Dishman: When you use the term St. Paul you mean the headquarters of the Northern Pacific and the Great Northern?

The Witness: That is correct.

By Mr. Golden:

Q. Were the presidents of the Great Northern and the Northern Pacific presidents of the S. P. and S. prior to 1932?

A. Not prior to 1932, no. The S. P. and S. had its own corporate setup up to 1932.

Mr. Maguire: Pardon the interruption, Mr. Golden. This is not in the nature of cross-examination.

The S. P. and S. still has its own corporate setup?

The Witness: Yes.

Mr. Maguire: It is just a difference in officers is what you mean?

The Witness: That is right, a difference in presidents.

By Mr. Golden:

Q. Aside from these examples of rather major changes which you have mentioned, can you think of any of the [fol. 2641] smaller ones which have come about?

A. Well, of course in the ordinary course of business the S. P. and S. prepares a budget for expenditures each year which is submitted to St. Paul and is passed upon by the two presidents, and, of course, they get whatever suggestions they wish to obtain from officers of their respective companies. The budget is then approved and the S. P. and S. vice president is told what is approved and what would be deferred or what would be absolutely disapproved.

Q. Are you familiar with how these matters come to the presidents of the two parent lines?

A. Yes. At the present time the vice president in Portland of the S. P. and S. addresses generally, always, I think, with respect to the budget, a joint letter which is sent to the president of each of the parent line railroads, irrespective of who may be president for that particular year. The budget is sent jointly and many other things are sub-

mitted to the Great Northern and Northern Pacific by a joint letter to each of the presidents.

In addition to the budget, of course, we have many things that come up from day to day. We get cash statements, daily cash reports, forecasts of cash requirements, and many other reports which you get in any business. Things we furnish on the Northern Pacific, they are furnished in any business and similar statements are furnished to executive officers of the Northern Pacific by Northern Pacific people.

[fol. 2642] Q. Could I interrupt for a moment, Mr. Poore? Is there any exception to their flow of traffic through the presidents' offices?

A. Oh, yes, the law department, for instance, your department, will receive letters from the law officers of the S. P. and S. Railway Company from time to time, traffic officers will similarly, the accounting officers will receive letters from the comptroller of the S. P. and S. from time to time, particularly when any policy question with respect to accounting matters are under consideration. And in that sort of a case the comptroller of the two Northern lines will confer and either jointly, generally jointly, will issue instructions to the comptroller of the S. P. and S. Railway Company as to how he shall handle the accounting of the S. P. and S. and its subsidiary lines.

Mr. Maguire: Could I interrupt for just one question for clarification?

When you talk about letters and reports going to the law departments and the traffic departments, are they similarly jointly reports as a rule to the law departments or traffic departments of both companies?

The Witness: I can't answer that question as to the law department or as to the traffic department. The accounting department on the Northern Pacific does report to me and, generally speaking, the letters are sent to the comptrollers of the Great Northern and the Northern Pacific.

Mr. Maguire: The same as to the presidents?

[fol. 2643] The Witness: The same as to the presidents, and the reply made by the comptrollers of the two Northern lines is generally joint.

By Mr. Golden:

Q. When I interrupted, Mr. Poore, you were giving some examples in the handling of routine S. P. and S. matters. Did you have any more of those?

A. What we would call relatively trivial matters are taken up from day to day. The S. P. and S. does not make any contributions to the Chamber of Commerce or any state organization without first getting the approval of the presidents of the two parent lines. It can not change its offices or personnel or rates of pay without getting approval of the two parent lines. Now, when I say rates of pay I don't mean scheduled rates that have come by union agreement. I mean those rates which apply to officers and employees who are not covered by any scheduled agreement.

The S. P. and S. has a pension plan which was put into effect. It happens in this case to follow the Northern Pacific pension plan, but it could not be put into effect without first securing the approval of both the Great Northern and Northern Pacific presidents.

Many other routine matters, payments of taxes and things like that, to obtain whatever discount is obtainable by early payment, those sort of matters are always taken up with the two parent lines before any payment is made.

[fol. 2644] Q. Could you tell us a little more specifically, Mr. Poore, what part you play in the handling of these matters as they come into the executive department?

A. Practically all letters received from the vice president of the S. P. and S. addressed to the president of the Northern Pacific pass over my desk. In many cases I prepare or they are prepared under my direction letters in reply to it or a letter to the Great Northern president telling what the Northern Pacific views are with respect to the matter under consideration, and in many cases where there are perhaps policy questions involved or even relatively small matters I may confer with Mr. Turnburke who occupies a position on the Great Northern similar to the one I occupy on the Northern Pacific. We will discuss the matter very often and reach an agreement as to the reply that will be made to the S. P. and S. letter, and the letter that is actually sent will be sent over the name of the presi-

dent of the Northern line that happens to be president of the S. P. and S. in that year.

Q. Since you have been in the executive department since 1920—

A. December 1, 1920.

Q. Mr. Poore, that would indicate that you have been in during three administrations or three types of administrations—

A. (Interrupting) Of the S. P. and S.

Q. (Continuing) —of the S. P. and S. as testified to by Mr. Hart yesterday. From your observations would you [fol. 2645] tell us what your opinion is as to the difference in these three types of administrations from a practical standpoint?

Mr. Maguire: Just a moment, Mr. Poore, please.

Your opinion as to the difference, I don't know, it may be the phrasing of the question. Of course the witness can advise as to the differences but if this is a question of opinion as to the weight or anything of that sort, I certainly object to it, but if it is merely a statement of fact as to what the differences are between them, why, I have no objection.

Exam. Dishman: Is that what you want to elicit, Mr. Golden?

Mr. Golden: I will rephrase the question and ask him whether or not there has been any difference.

A. No, there is no change in substance, it is a change in form only.

Mr. Golden: You may cross-examine.

Mr. Maguire: That is good, I have no objection.

Mr. Rockwood: May I ask a question, Mr. Examiner?

Exam. Dishman: All right.

By Mr. Rockwood:

Q. Mr. Poore, are you familiar with the matter in which the determination was made of what, if any, cash payments would be made by the S. P. and S. to the Great Northern and Northern Pacific.

A. I intended to come to that in a minute. We do get, as I said, daily cash statements from the S. P. and S. and we also

get cash forecasts of what they will need to meet their [fol. 2646] operating expenses, taxes, and other bills in the future. The question of how much, if any, the S. P. and S. will pay to the parent lines is considered by Northern Pacific and Great Northern officers generally late in the year, and as a practical matter, Mr. Turnburke and myself always discuss that question together before any conclusion is reached. We take into consideration what the S. P. and S. must have to meet its operating expenses, to meet its taxes and what it will need in case it is going to purchase any new equipment in the relatively near future, and we then conclude what the S. P. and S. can spare to send to its parent lines. After we have reached our conclusions we generally advise our presidents what our conclusion is. They sometimes consider it together. Sometimes I don't think they even consider it together but they accept the recommendation made by Mr. Turnburke and myself. When that decision has been made by the presidents a letter of instruction is then sent over the name of one president, whoever happens to be president of the S. P. and S. that year, instructing him to arrange to make payments in the amount agreed upon to the parent lines.

Q. To what extent, if any, does the vice president in Portland participate in the determination of such payments?

A. As a practical matter very little. Prior to 1940, that is, between 1932 and 1940, he had no—there was no consideration given to suggestions of S. P. and S. officers. When in 1940 or shortly thereafter a vice president was ap- [fol. 2647] pointed for the S. P. and S. for the first few years after that appointment no change was made, but later when Mr. Dixon became vice president of the S. P. and S. —I think that was in 1942 or '43—he did make one or two suggestions and later still in 1947, when Mr. Stanton became vice president of the S. P. and S., the suggestions were made by the S. P. and S. people as to what they thought they could spare. However, in our consideration in St. Paul, we didn't always agree with them as to what they needed. Generally they thought they needed more than we thought they needed.

Q. In the final analysis, after Mr. Stanton became president, by whom was the determination actually made of the

amount of cash which should be paid at any time by the S. P. and S. to the parent lines?

A. As a practical matter I think it was fair to say it was made by Mr. Turnburke and myself with, of course, a recommendation of our conclusions to our president, and unless they disapproved our recommendation that was what actually was done by the S. P. and S. people.

Mr. Rockwood: That is all I have. Thank you, Mr. Examiner.

Cross examination.

By Mr. Maguire:

Q. Mr. Poore, when you talk about payments of cash to be made to the Great Northern and Northern Pacific, what cash are you referring to? What is the nature of those payments?

A. Interest on the bonds. That's all it has been up to now. The S. P. and S. pays interest on the bonds and whatever in [fol. 2648] addition to that interest on bonds we think they do not need for operating purposes.

Q. That is turned over to the parent lines in the shape of dividends, is that right?

A. No. The S. P. and S. has never paid a dividend.

Q. You must milk their cash?

A. I don't agree with that at all. Certainly with the investment we have in the property we are entitled to take something back.

Q. Well, as I say, you take it out in cash? Maybe the word milk—

A. (Interrupting) That is what I object to.

Q. I will withdraw that. What you do is, whenever they have dividends, you just draw upon them for cash whenever they have the money to spare?

A. That is correct.

Q. How long is that matter of getting cash in one form or another—I suppose the two St. Paul companies determine whether that cash is to be applied to interest or on indebtedness due to the two St. Paul companies or whether it shall be in lieu of a dividend or what?

A. Well, up to a few years ago the S. P. and S., in addition to its indebtedness, owed the two Northern lines very substantial amounts for advances that were never refunded, and the payments were then applied as directed by the [fol. 2649] parent line rather than payment of interest in payment of re-payment of advances.

Q. I think either Mr. MacFarlane or Mr. Hart yesterday testified about the forgiveness of the two Northern companies of something over 70 million dollars of cash advances made to the S. P. and S., do you recall that transaction?

Mr. Rockwood: Excuse me. There was no testimony of forgiveness of cash advances. There was forgiveness of accrued interest unpaid.

Mr. Maguire: All right, I will accept that as correct.

By Mr. Maguire:

Q. Was that $70,000,000 of interest unpaid?

A. I think it was about seventy-nine.

Q. Yes, I believe that figure is right. You said up to a short time there were no dividends. Has there been any cash applied in lieu of dividends?

A. No.

Q. There never has?

A. The S. P. and S. has never paid a dividend.

Q. What has been the recent earnings of S. P. and S. as to the return upon the investment?

Mr. Rockwood: I don't want to interrupt, Mr. Maguire. The details of that will be furnished by the S. P. and S. comptroller who will be on a little later.

Mr. Maguire: If that is it, I won't ask this witness about that at this time.

By Mr. Maguire:

Q. I received a lot of information yesterday and some [fol. 2650] of it may be a little confused in my mind. I hope you will forgive me.

I believe there was some mention made of the executive committee of the Board of Directors consisting of the

presidents of the Great Northern and Northern Pacific regardless of what their respective offices might be in the S. P. and S. at the present time, is that correct?

A. Yes.

Q. Is that committee associated into the By-Laws or into the general powers of the Board of Directors?

Mr. Golden: Mr. Examiner, I am going to object to this on the ground that it is not cross-examination which is based upon the direct testimony of this witness.

Mr. Maguire: I will withdraw the question for the moment.

By Mr. Maguire:

Q. When you say the two presidents are the ones that make those final decisions, they make those decisions as members of the executive committee, do they not?

A. No, I don't think so. The executive committee of the S. P. and S., to my knowledge, has never had a meeting. They do have a meeting set—once a year they do have a meeting to approve actions taken by S. P. and S. officers with respect to leases and things of that sort that are not acted upon currently.

Q. The executive committee is a two-man committee, isn't it?

A. It is a two-man committee.

Q. You say they haven't held formal meetings and had [fol. 2651] minutes, but they are holding meetings all the time?

A. Yes, the president and vice president of the S. P. and S., I don't think they ever talk together, and certainly no record is made of an executive committee meeting. If they met as an executive committee I would think that some record would be made.

Q. But as members of the executive committee they have the power to take these actions that you have described, haven't they?

A. Yes, but also as president and vice president they have the power to determine the policy of the S. P. and S. with respect to any questions that come up.

Q. Yes, as corporate officers of the S. P. and S.?

A. That is right.

Q. And the constitution of the executive committee really is to, however, keep either one of the stockholding companies, which happens to have its representative as a president of the S. P. and S., from gaining an undue advantage over the other, isn't it? That acts as a safety valve, doesn't it?

A. I suppose that is so. I know that we would not agree to not having representation on the executive committee jointly with the Great Northern if we both own 50 per cent of all securities and put up 50 per cent of the money.

Q. Surely.

A. I think the executive committee, however—I am just thinking on this—is appointed, so that if any action, formal [fol. 2652] action, is necessary at any time we can call an executive committee meeting in St. Paul, and to protect that, as I think Mr. MacFarlane explained yesterday, we maintain two assistant secretaries in St. Paul so we can hold formal meetings, and I think that is the real reason for having an executive committee on the S. P. and S. but as a practical matter they meet only once a year to approve a mass of leases and other documents which have been executed by S. P. and S. officers during the year.

Q. But the purpose of your executive committee is to insure a perfect equality of balance of control of the S. P. and S. so that neither one company or the other—

Mr. Golden (interrupting): Just a moment, I have an objection. I object to the counsel restating the answer the witness has just given. He has stated what the purpose of the executive committee is.

Exam. Dishman: You can't add any more to what you have already said?

The Witness: No, I can't. I don't agree with what Mr. Maguire is saying, the purpose of it.

By Mr. Maguire:

Q. The effect of the executive committee is that, is it not?

A. That each company—well, of course, they are equally represented on the executive committee.

Q. Yes, and so that no action can be taken of either of the equal owners without the full consent of the other, can it?

[fol. 2653] A. That is correct.

Q. You stated that the same statements are rendered to the executive officers of the S. P. and S. in St. Paul as are rendered in any business?

A. I am talking generally, pretty much so, yes.

Q. And so it is not unusual for reports to be made by a vice president of a corporation to the president of the corporation or to the executive committee of the corporation, regardless of ownership and regardless of the facts and circumstances involved here, is it?

A. No, there are no statements made to the executive committee of the S. P. and S.

Q. Not by name but actually to the president of the stockholding company?

A. Well, reports are made to the vice president and the president of the S. P. and S. Railway.

Q. Now I would like to go back to your mention of the additional train which was acquired to be operated or which the Great Northern wished to have operated by the S. P. and S. in view of the shorter schedule, time schedule, passenger schedule, put into effect by the Great Northern to the coast which the Northern Pacific would not agree to, that is, would not agree to the extra train. You say that was settled to the satisfaction of both parties?

A. That is correct.

[fol. 2654] Q. In other words, the Great Northern did not insist in view of the objection of the Northern Pacific to the S. P. and S. bearing the entire expense of this extra train which was necessitated, is that true?

A. You say the Great Northern did not object?

Mr. Maguire: Would you read the question, please?

(Question read.)

By Mr. Maguire:

Q. The Great Northern did not insist upon the S. P. and S. bearing that expense?

A. No, they did not insist on it. We would not go along with it. They always felt that the S. P. and S. should bear that cost but the basis on which the S. P. and S. would operate that train—I am talking about the cost—was agreed upon. As a matter of fact, it was agreed upon by Mr. Turnburke and myself, and it was only to protect the S. P. and S. against loss because of the operation of that extra train. It was an extra train.

Q. But what I am getting at is, that while the Great Northern had certain wishes, they were unable to put those wishes into effect because of the objections of the Northern Pacific?

A. That is correct.

Q. Mr. Poore, is it an unusual thing in the conduct of the affairs of a corporation for the president and the vice president to decide what charges will be made by that corporation or what compensation will be accepted for the use of its properties or for the use of other properties? Is that an unusual thing?

[fol. 2655] A. It would be unusual, I would think—

Q. (Interrupting) Just a moment, Mr. Poore, I asked a specific question.

Would it be unusual for the president and vice president of any corporation to decide what compensation would be paid by or received by that particular corporation for the use of other company's facilities or for the use by others for its own facilities?

A. Well, I don't think that, and certainly it isn't the way business is done, but I don't think the president of the Northern Pacific, and perhaps with the vice president of the Northern Pacific, could tell the Milwaukee company that you pay this amount for use of our property. Ordinarily that would be negotiated between the two companies.

Q. But the president and vice president of the S. P. and S. could decide for the S. P. and S. what that company would pay or what that company could accept, could they not?

A. Well, yes. Perhaps you should go one step further, the president of the S. P. and S.—

Q. (Interrupting) I didn't ask you one step further. You have answered my questions.

Mr. Maguire: Thank you, Mr. Poore.

Exam. Dishman: Anything more?

Mr. Golden: Yes.

Redirect examination.

[fol. 2656] By Mr. Golden:

Q. Some questions were directed to you concerning the powers of the Northern Pacific and the Great Northern, and as to whether those powers were exercised as an executive committee or as president and vice president of the S. P. and S., and I think you have answered as to the executive committee, what the executive committee is, but I would like to ask you this, whether it is customary in the normal business of any corporation for the vice president to have equal powers with the president?

A. No.

Q. Is that the case of the S. P. and S.?

A. The vice president does not have equal powers with the president, even on the S. P. and S.

Q. But in the conduct of the affairs of the S. P. and S. does the president of the Great Northern and the Northern Pacific have equal powers?

A. They confer. The president from time to time actually gives the instructions to the vice president in charge of the local organization.

Q. Could the president of the S. P. and S. in any particular year give instructions to the S. P. and S. as to the conduct of its affairs without the consent of the vice president?

Mr. Maguire: I think that that is a question calling for a conclusion of the witness on direct testimony. I think it should be borne in mind by counsel that counsel in exam- [fol. 2657] ining his own witness is subject to certain restrictions which are not binding on cross-examination, and I believe he is calling for a conclusion of this witness as to the legal effect of certain actions, and on direct examination I don't believe he has the right to do that.

Exam. Dishman: You mean on redirect?

Mr. Maguire: On redirect or direct.

Mr. Golden: The redirect examination is directed to the questions which were asked on cross-examination, in which questions counsel assumed that the witness was qualified to answer those questions.

Mr. Maguire: Well, as I say, Mr. Examiner, there is latitude allowed on cross-examination, for example, which has been thrashed out here many times in the matter of asking leading questions, and this is not a leading question, of course, but it is calling for a conclusion or a speculation of the witness.

Exam. Dishman: It seems that the witness has been expressing himself on matters of this kind on cross-examination and direct, so I will let the witness answer.

(Question read.)

By Mr. Golden:

Q. Of the S. P. and S.?

A. As a practical matter, I suppose he could, but also as a practical matter he does not do it.

Q. Is it customary in the normal course of the conduct of the business of corporations for the vice president or [fol. 2658] other officers of any corporation to decide matters relating to the affairs of some corporation of which they are not officers? In other words, is your situation unusual with regard to the matters that you decide for the S. P. and S., personally?

A. No, I don't think it is customary, and as a matter of fact while I perhaps decide certain things for the Northern Pacific and Mr. Turnburke for the Great Northern, the instructions that are actually issued are not issued under our name. Either our presidents sign those letters or we sign their names to them under their instructions.

The instructions to the vice president of the S. P. and S. at Portland either by the Northern Pacific or Great Northern officers in the executive department are sent out over the name of the man who is president of the S. P. and S. for that year.

Q. But that would not be true, would it, as to the correspondence between departments other than the executive departments?

A. No, the departments of the S. P. and S., corresponding directly with similar departments on the Northern Pacific or Great Northern, are addressed to the heads of those departments and answered by the heads of those departments without reference in a great many instances at least to the president or the vice president of the S. P. and S. in that particular year.

Mr. Golden: That is all I have, Mr. Examiner.

Exam. Dishman: Anything more?

Recross examination.

[fol. 2659] By Mr. Maguire:

Q. In other words, Mr. Poore, when you were speaking of the decisions made by you and Mr. Turnburke, in cases where it is a matter of considerable substance, while you two might arrive at an agreement, of course that agreement would have to be approved by your respective presidents, would it not?

A. That is correct. Usually they approve them, however.

Q. Surely, that is why you are vice president.

Mr. Maguire: That is all. Thank you.

Exam. Dishman: The witness is excused.

(Witness excused.)

[fol. 2660] Mr. Torinus: I will call Mr. Turnburke.

May we be off the record, Mr. Examiner, while these exhibits are distributed?

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

The exhibit being distributed will be number 41.

(Defendant's Exhibit No. 41, Witness Turnburke, was marked for identification.)

V. P. TURNBURKE was sworn and testified as follows:

Direct examination.

By Mr. Torinus:

Q. Mr. Turnburke, will you state your name, residence and occupation, please.

A. My name is V. P. Turnburke, T-u-r-n-b-u-r-k-e. I reside at St. Paul and I am vice-president, executive department, Great Northern Railway Company.

Q. And your headquarters are here at St. Paul, are they?

A. Yes, sir.

Q. Will you state briefly your railroad experience.

A. I have been in railroad work for over forty years. I am a graduate civil engineer, and I started working in the engineering departments of the Michigan Central and the Milwaukee Railroads, and in 1917 I came to St. Paul as statistician for the Great Northern and have been with the Great Northern ever since, except for a year and a [fol. 2661] half during federal control when I was assistant manager and later manager of the operating statistical section of the U. S. Railroad Administration in Washington.

With the Great Northern I have been statistician, later general auditor, and still later, in 1942, assistant to the president in the executive department, and in 1945 vice-president.

Q. Have you ever been, Mr. Turnburke, an officer or employee of the Spokane, Portland, Seattle Railway Company or of any of its subsidiaries?

A. No, sir, I have not.

Q. Will you tell us whether or not in your employment with the Great Northern in the executive department, since 1942, first as assistant to the president and later as vice-president, executive department, you have had occasion to become familiar with transactions involving the Great Northern Railway Company and the Spokane, Portland and Seattle Railway Company, and with the conduct of the officers of those two companies in respect to transactions in which they are interested?

A. Yes, I have. All the mail coming into the executive department comes over my desk first, including both the

Great Northern and S. P. and S. matters. I have handled matters for the president of the Great Northern in connection with the S. P. and S. during that period, from 1942 on, the normal procedure being to write replies to the letters on matters of routine or minor importance, after talking to Mr. Poore concerning them.

[fol. 2662] Q. That is Mr. Poore of the Northern Pacific who just testified?

A. Yes.

And in connection with the matters of more importance, quite frequently I have written letters of instruction to the S. P. and S., but I have always conferred with the president of the Great Northern in connection therewith.

Q. In the course of your duties, Mr. Turnburke, you occasionally prepare letters in the name of Mr. John Budd, who is now president of the Great Northern? You prepare letters for his signature in connection with S. P. and S. matters?

A. Yes, I do. When he is out of town I sometimes sign them, sign his name to those letters.

Q. Now, can you tell us, Mr. Turnburke, the extent to which in executing your duties you confer with either Mr. Poore or Mr. MacFarlane of the Northern Pacific or confer with any officials of the Northern Pacific concerning S. P. and S. matters?

A. Well, the largest volume of material that is flowing in from the S. P. and S. all the time are these authorities for expenditures, so-called A.F.E.s. Every one of them is prepared by the S. P. and S. and comes to both the Great Northern and Northern Pacific offices for approval. Those amount to three or four a week. I think there was something between one hundred fifty and one hundred sixty handled last year. As I say, they come over my desk, and if Mr. Budd, John Budd, happens to be president that year, I sign those of minor nature, and the larger ones, of course, [fol. 2663] are discussed with Mr. Budd, and, in any event, those involving land sales or purchases are always discussed with the Northern Pacific, Mr. Poore or Mr. MacFarlane, and no matter how small the item may be.

If the A.F.E. covers a project that was on the yearly budget that had been approved by the president, the signing

of it is a matter more or less of a formality as approval has been given in advance of the preparation of the A.F.E.

On the budget there are usually, or there was last year, for example, between fifty and sixty items, so there are at least a hundred items of other projects that are not on the budget that come up to the executive departments of both parent lines for decision as to approving or rejecting them.

Q. How often would you say, Mr. Turnburke, that you have occasion to talk to officials of the Northern Pacific about A.F.E.s and other S. P. and S. matters, how often and how regularly?

A. Well, I am talking to Mr. Poore and Mr. MacFarlane regularly, or they to me, possibly, I am sure every week, and several times in many weeks.

Q. In passing on these A.F.E.s as they come in does the question sometimes arise as to whether these expenditures covered by these A.F.E.s are to be capital expenditures or whether they are to be classified as operating expenses?

A. Usually not. The A.F.E.s are prepared under the Commission's rules, accounting rules, and show on the face [fol. 2664] of them the classification of the expenditures, and I don't remember more than one or two instances where we have taken any exception to the classification.

Exam. Dishman: Have you defined for the record the term "A.F.E."

The Witness: Authority for expenditure involving any capital item from one dollar up.

By Mr. Torinus:

Q. As far as these A.F.E.s are concerned, so long as they involve a capital item, even if it is only one dollar, they come into your office from the S. P. and S. for approval, is that right?

A. Yes, copies go to both offices, both the Northern Pacific and the Great Northern. If the item is a sizeable one, we will clear it, not only by telephone, but by letter between the two parent lines, the one who happened to be vice-president that year giving approval or disapproval to the one who happens to be president, so that a complete record is made of the transaction. If it is a small item it is cleared

by telephone, or if it is on the regular budget, why, advance clearance has been given so that is not needed.

Q. Do you and Mr. Poore occasionally make trips out to the S. P. and S. property, Mr. Turnburke?

A. Yes, I have been over practically all lines of the S. P. and S. in motor cars and by train, by automobile, and Mr. Poore, to my knowledge, has done the same, and the [fol. 2665] presidents of both lines are out a great deal more often than either Mr. Poore or I on the property and spending several days there at a time.

Q. How often do you yourself have a chance to get out there?

A. Oh, I am out there every year. I was last out in October.

Q. Mr. Budd several times a year?

A. I spent a couple of days there with them.

Q. Does Mr. Budd get out there several times a year?

A. Yes, several times, three or four times.

Q. To what extent do you personally have contact over the telephone, for example, with the officials of the S. P. and S.? Take the vice-president of the S. P. and S. at Portland, how regularly do you have contact with him by phone?

A. We have our own long distance line into Portland, and when Mr. Budd is president of it, why, we are in contact with the president, or the vice-president of the S. P. and S. in Portland right along, every week, two or three times a week. When Mr. MacFarlane is president, why, our contacts are not so frequent. We usually handle the transactions through Mr. Poore or Mr. MacFarlane when Mr. Poore isn't there.

Q. Do you regularly receive in your office certain reports from the S. P. and S.?

A. Yes.

Q. Will you tell us what those reports are?

A. We get daily carloading reports showing the carloading by commodities and daily cash reports.

[fol. 2666] Q. Who do those reports come from, what official of the S. P. and S.?

A. They are prepared by the treasurer, the cash reports, and the carloading report by the transportation department, and are distributed to the president of both Northern lines.

Q. And those reports come from Portland, do they?

A. Yes. They come in daily.

Q. What other reports do you regularly receive?

A. In addition to that we get all the regular monthly reports of cash forecasts monthly, their payroll reports, and reports of earnings, weekly estimates of earnings, monthly earning reports from their accounting department direct, and other matters are handled by correspondence, by letter, such as items involving the purchase of property or the sale of property.

Q. Before we get to those other items and just continuing for the moment with reports, do you get reports of freight charges on company materials, for example, regularly?

A. Yes.

Q. From S. P. and S.?

A. That is handled, however, through the traffic departments of the lines and the report that we get is sent by traffic vice-president to the executive department of the Great Northern.

Q. That is, the vice-president at Portland of the S. P. and S. will advise the traffic departments of the parent lines currently of the amount of freight charges that the re- [fol. 2667] spective parent lines have been paid or have coming on company material for the S. P. and S., is that right?

A. That is correct.

Q. Is some effort made, do you know, Mr. Turnbu[illegible], to keep the amount of those charges on a parity so far as the parent line is concerned?

A. Yes, it is.

Q. How about the opening up of new industries or the closing of industries on the S. P. and S., do you get regular reports concerning industries out there?

A. Yes, we are advised of the eminence of a new industry, or the closing of an old one through fire or for some other reason. We have also, of course—they handle by correspondence with the presidents of the two Northern lines the

question of purchase of industrial property for industries, and the sale or lease of property owned by the S. P. and S. or Oregon Trunk or Oregon Electric to industries.

Q. Are any properties purchased by the S. P. and S. without the approval of the officials of the parent lines?

A. No, sir, they are not.

Q. And such approval, is that generally made by the president of the S. P. and S. who may happen to be the president of the Great Northern or the Northern Pacific during the particular, that particular year, with the concurrence of the vice-president of the S. P. and S. who happens to be the president of the other parent line, is that [fol. 2668] the way it is handled?

A. That is the procedure, yes.

Q. Is that procedure followed also in connection with the sale of real estate?

A. Yes, sir, it is.

Q. With the execution of deeds, leases?

A. After the sales have been approved, then when the deeds and leases, deeds or leases, have been issued, they come into St. Paul again for signature, the notification to both parties.

Q. Is that procedure also followed with respect to easements for highways, for example?

A. Yes, sir.

Q. These other gentlemen who have testified have covered some of the more or less major S. P. and S. projects, and I would like to question you in a little more detail about the routine business of the S. P. and S. and how it is handled in so far as you have personal acquaintance with it since your tenure in the executive department there since 1942.

Exam. Dishman: Mr. Torinus, is this a good place to stop?

Mr. Torinus: Yes.

Exam. Dishman: We will take a short recess.

(Short recess.)

Exam. Dishman: The hearing will come to order, please.

By Mr. Torinus:

Q. Mr. Turnburke, before proceeding with some additional questions about the routine matter, the routine mat-
[fol. 2669] ters, involving the S. P. and S. with which you are personally familiar, I would like to clear up one matter which was suggested to me during the recess.

During what years is the president of the Great Northern the president of the S. P. and S.?

A. In the even numbered years.

Q. So that since you have been in the executive department of the Great Northern since 1942, Mr. Gavin, who was president of the Great Northern prior to 1951, was president in the even numbered years, and since '51 Mr. John Budd has been president of the S. P. and S. in the even numbered years?

A. That is right.

Q. And in the odd numbered years those individuals have been vice-president of the S. P. and S., is that correct?

A. Yes, sir.

Q. The situation is exactly the reverse on the Northern Pacific as far as the years are concerned?

A. That is correct.

Q. In addition there is what official on the property of the S. P. and S. in charge of local matters there?

A. The vice-president of the S. P. and S. located at Portland.

Q. That is the arrangement which Mr. Hart described earlier in this hearing that has existed since 1942?

A. That is right.

Q. Since 1940 Mr. Rockwood tells me.

[fol. 2670] A. I was covering the '42 period on.

Q. I see.

Now I would like to ask you about some of these routine matters that come regularly to your attention, Mr. Turnburke, and to take up, first official matters involving the S. P. and S., and I would like to have you go into a little more detail than the other witnesses have with respect to the so-called annual improvement program or budget which is submitted each year, I understand, by the local vice-president of the S. P. and S. to the parent line executives.

Can you tell me just how that is submitted and how it comes to your attention and then what is done?

A. This annual budget is prepared in advance in the latter part of the year and submitted to each of the presidents of the Northern lines. The one last year, for example, which covered 1955, had some 54 items on it and totaled three-and-a-half million dollars. The items are described in great detail, a complete write-up of them, as to the charges to capital, operating, or expenses, any prospective savings and so forth. The presidents of the Northern lines then usually refer those to their chief engineers, for example, and the operating department vice-presidents to consider.

Q. When they refer the items to the respective chief engineers of the Northern lines and respective operating vice-presidents, will you tell us whether those officials, that [fol. 2671] is, the chief engineers and the operating vice-presidents hold any position with the S. P. and S.?

A. No, they do not.

Q. They are the chief engineers of the Great Northern and the Northern Pacific, respectively, and the operating vice-presidents of the Great Northern and Northern Pacific respectively, is that not right?

A. Yes.

Q. Will you proceed with your explanation of the handling of the budget?

A. Then each president arrives at his conclusions concerning these items individually, and after conference with his people on his railroad, and then the two presidents get together and talk the matter over and decide on the budget. Last year, for example, of the 54 items there were some 40 of them that were approved and about 10 either disapproved or referred back to the S. P. and S. for more information or suggestions given to the S. P. and S. concerning further studies to be made in connection therewith. After that is done a revised budget is prepared of the approved items.

Q. Can you retail (sic) any instance, Mr. Turnburke, where the budget, or rather the improvement program as it is called, as submitted by the S. P. and S. was approved in the form in which it was submitted?

A. No, I don't think that has ever occurred.

[fol. 2672] Q. Have you any further comment to make with respect to the budget?

A. No, I don't think so. I think that is pretty well covered.

Q. How about the purchase of diesel locomotives for example? Is that a matter which—I mean the purchase of diesel locomotives for the S. P. and S.—is that a matter which comes to the attention of the presidents and is that something that passes over your desk?

A. Yes, that usually is in the budget, although it might be considered outside the budget. A long range program has been developed and the control goes not only to the number of units to be purchased but the manufacturing company from which the unit shall be purchased, that is all decided in St. Paul. Then the financing in connection with it is usually worked out by Mr. Poore and myself, and that has been handled in several ways, either through conditional sale agreement, which have been consumated with the banks in Portland, with the banks in St. Paul, or equipment trusts. It is sold to the public.

Q. Do the S. P. and S. officials at Portland exercise any responsibility, then, with respect to the particular company from which the diesels are to be purchased or with respect to the financing of that equipment?

A. No, sir, they do not.

Q. How about the particular banks or financial institutions in which the S. P. and S. funds are deposited, who [fol. 2673] determines where those deposits are to be made and the amounts of those deposits?

A. That is all determined by the presidents of the Northern lines in St. Paul, both as to the amounts and the banks, and that from time to time has been changed upon instructions from St. Paul.

Q. How about the carrying of insurance, for example, on S. P. and S. property, how are insurance matters determined?

A. Well, the parent lines have insurance departments that have made inspections of the S. P. and S. property, and after those inspections and as a result thereafter the parent lines have decided how much insurance should be placed, on what structures or equipment it should be placed, and what company it should be placed with.

Q. Are those decisions made by the executives of the parent lines upon recommendation of S. P. and S. officials or upon recommendation of their own insurance departments?

A. Recommendations of their own insurance departments.

Q. Do you have any further comment to make, Mr. Turnburke, with respect to financial matters on the S. P. and S.?

A. Well, I would say that the broadest control is exercised from St. Paul, in such matters as instructing the S. P. and S. as to what value they should declare for the declared value of the property when the excess profits taxes were on, in which they did not follow the recommendations of the S. P. and S.

Q. By the way, Mr. Turnburke, do you know whether or [fol. 2674] not the comptroller's office at St. Paul receives monthly statements of account, Great Northern comptroller's office at St. Paul receives monthly account, of the individual accounts from S. P. and S.?

A. Yes, they do. They receive a great deal of detail of the primary accounts of all three companies, the S. P. and S., Oregon Trunk, and Oregon Electric. We receive summaries of those in the executive departments, of both the balance sheet, and of course the income accounts.

Q. Were those regular monthly statements received by the comptroller when you were in the accounting department, did you see them?

A. Yes, and I have referred to them many times since I have been in the executive department for details of some of their operations, operating costs.

Q. Now I would like to ask you some questions about operating matters on the S. P. and S. Railway. Sometimes it is a little hard to distinguish between an operating matter and a financial matter. Are any new lines constructed in connection with the S. P. and S. system without the approval by the executives of the parent lines?

A. No, they are not.

Q. How about abandonments, are they undertaken without consultation and approval by the parent lines?

A. No, they are not. I remember one instance where the S. P. and S. recommended the abandonment of a portion [fol. 2675] of their branch line between Klickitat and Goldendale.

Q. That is on the so-called Goldendale branch?

A. Yes. And after studying the matter they were instructed not only not to abandon it but to relay it with heavier rail and put in a reasonable amount of ballast and keep the line in operation.

Q. Do you know whether or not that line is still in operation, Mr. Turnburke?

A. Yes, it is.

Q. How about line changes? Does the S.P. and S. official at Portland, or those working on the property in Portland, do they have any discretion with respect to line changes?

A. No. They, of course, submit all such questions to St. Paul for decisions. Any of these matters might originate in several different ways. They might come up for attention upon recommendation by the S. P. and S. people for consideration by the presidents of the two Northerns or they might have originated in one of the departments of either one of the Northern lines, such as the operating department or accounting department or it is something that we in St. Paul might originate in either executive department. That is the way those things start or come up for attention, but the final decision is made by or in the names of the presidents of the two Northern lines. For example, I remember an instance on the Oregon Trunk where the vice-president at Portland recommended that a new agreement be made with the Union Pacific for use of a portion of their track, and that proposal was turned down [fol. 2676] and then we recommended that we purchase a line from the Union Pacific and that thing was also turned down, so that sometimes the proposals are approved and sometimes they are turned down and sometimes they are modified. It is just the normal way of handling business, whatever seemed to be the best thing to do from the viewpoint of the two owners.

Q. When you say they are turned down, can you tell us whether that turn-down was made after consultation between the principal executive officers, that is, the presidents of the Great Northern and Northern Pacific at St. Paul?

A. That is so.

Q. Do you recall any instance involving the Oregon Trunk also, Mr. Turnburke, with respect to contract matters where the presidents of the parent lines have considered a recommendation of the S. P. and S. vice-president at Portland and reached a decision contrary to his recommendation?

A. I remember when Mr. Dixon was vice-presider. He submitted—

Q. (Interrupting) He was the vice-president at Portland?

A. Vice-president at Portland of the S. P. and S. He submitted an agreement that he had worked out with the Reclamation Bureau covering crossings, canal crossings, of our property on the Oregon Trunk. That matter was referred by Mr. Gavin, who was president of the Great Northern, to Mr. Balmer, who was vice-president.

Q. Vice-president of the Great Northern at Seattle, is that right?

[fol. 2677] A. Great Northern at Seattle, and also a trustee of the S. P. and S. Mr. Balmer did not think the agreement properly protected the railroad and redrew the matter in an entirely different manner, after conferring with Mr. MacFarlane, who was then vice-president of the Northern Pacific at Seattle. And the redraft then worked its way back through the presidents in St. Paul where it was signed and finally put into operation.

Q. Do you know whether or not at that time, Mr. Turnburke, before this agreement was finally executed by the officials of the parent lines at St. Paul and finally approved by them, before execution it was taken up again with Mr. Dixon, the local vice-president at Portland?

A. No, it was not.

Q. Now I would like to ask you some additional questions about operating matters. Have the executives of the parent lines, for example, ever been asked to pass upon questions relating to boarding camps?

A. Yes, that question has been up several times. Mr. Stanton, while vice-president of the S. P. and S. at Portland, rec[illegible] that the boarding camp operations be taken over by the S. P. and S.

Q. Taken over from whom?

A. Taken over from the contractor who was operating them, Addison Miller Company. The two presidents of the Northern lines decided that that should not be done and [fol. 2678] so instructed Mr. Stanton to make an agreement with the Addison Miller along the line of the agreements that both Northern lines had with that company at that time.

Q. Addison Miller being the contractor for both the Northern Pacific and Great Northern, is that correct?

A. That is right.

Q. How about repairs to tunnels, for example, the question of tunnel repairs, are they submitted to the executives of the parent lines.

A. Yes. The question of relining some of the long tunnels that had wooden linings, relining them with concrete has been up several times, almost continually, and proposals submitted by Mr. Dixon for relining the Cornelius Tunnel with concrete was, after review by the chief engineers of the Great Northern and Northern Pacific, refused by the presidents of the two Northern lines.

Q. Do you know whether or not, Mr. Turnburke, in passing upon the question of whether or not recommendations of the local S. P. and S. vice-president at Portland will be approved or disapproved, for example, with respect to relining tunnels or other enginnering or operating matters, the presidents of the parent lines confer with officials at St. Paul on the staffs of the Great Northern or Northern Pacific?

A. Yes, that is true. Anything of any size the presidents of both Northerns and frequently myself and Mr. Poore have been on the ground and know the situation there. It [fol. 2679] is not something that's coming up cold. We have a background of information on the subject and have some opinions ourselves as well as securing advice from our engineering or operating people, if it's of any magnitude.

Q And when you speak of engineering or operating people are you referring to engineering or operating people on the S. P. and S. property or on the Great Northern or Northern Pacific property?

A. Great Northern and Northern Pacific.

Q. How about other operating matters, such as track relaying, ballasting, for example?

A. Well, those are usually in the budget, although sometimes emergencies come up for additional amounts. A great deal of detail is handled such as icing contracts, how often the rails should be checked by the detector car. The detector car is furnished by the Great Northern and Northern Pacific, and they have to confer with one another as to how the schedules fit in to get the track inspected on the S. P. and S. as well as taking care of the parent line requirements with their own detector cars.

I remember a minor incident where Mr. Dixon wanted to change the train numbers on his passenger trains, which was, of course, taken up with St. Paul and approval given to his suggestion for changing the train numbers.

Q. That was when Mr. Dixon was vice-president of the S. P. and S. at Portland?

[fol. 2680] A. Yes.

Mr. Maguire: May I interrupt a minute and go off the record?

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

(The last question and answer were read.)

A. Such matters as the sale of scrap locomotives, picking a time for sale, are determined in St. Paul by the two Northern lines and questions of weed control are submitted to the executive departments. These are matters that I am referring to that come to the executive department. There are undoubtedly many other questions that come up.

Mr. Maguire: Just a moment, please. Pardon the interruption, Mr. Turnburke.

I object to any statement made by the witness that I guess or there are undoubtedly many others. I move that that be stricken as to speculation.

Exam. Dishman: Can you state as to your own knowledge?

The Witness: All I have been testifying are to my own knowledge of operating matters that come to the attention of the executive department. I want to make it clear that

that's not matters that I am testifying for the operating department or anybody else.

Mr. Maguire: That is understood but the thing that I was objecting to, Mr. Examiner, was speculation on the part [fol. 2681] of the witness that he guessed or he was sure that there were many other matters that came direct to other departments. That is a mere guess and speculation.

The Witness: No, it is a little more than that. I am sure of it because I have been in the offices of the vice-president of operations on our railroad when he was talking over the telephone with the vice-president at Portland and handling operating matters.

Mr. Maguire: I have no objection whatever to a statement of the witness' own knowledge, of course.

By Mr. Torinus:

Q. I would like to ask you a question, Mr. Turnburke, about this passenger train contract between the Great Northern and the S. P. and S. involving trains number 1 and 2, as I recall it, to which Mr. Poore referred in which it was, the impression was left, at least, that the Northern Pacific objected to the S. P. and S. bearing the entire cost of those trains and an agreement was worked out whereby the Great Northern would assume some portion of the cost. That is my recollection of the matter as it was left at the conclusion of Mr. Poore's testimony. Are you familiar with that matter, Mr. Turnburke?

A. Yes. I was personally in on the negotiations of the contract with Mr. Poore.

Q. Can you tell us whether or not the Great Northern has had to bear a portion of the cost of those trains?

A. No, they haven't. The contract agreement merely pro- [fol. 2682] vided that in the event that there was any out-of-pocket loss to the S. P. and S. the Great Northern would bear its share of the cost or the entire additional cost, but the trains have always made more than the out-of-pocket cost so there never was any money paid. The S. P. and S., of course, get the revenue from the passengers they handle from Spokane to Portland in both directions and that has been way in excess of their operating costs.

Mr. Maguire: Could I ask a question for clarification at that point?

Mr. Torinus: Yes, sir.

Mr. Maguire: The contract, while we don't have it before us here, I am willing to take your word on that, of course, was that the Great Northern would bear any out-of-pocket loss suffered by the S. P. and S. in the operation of that train?

The Witness: That is right.

Mr. Maguire: But there has been no such out-of-pocket loss?

The Witness: No. And there was some other distinction that it has to be an out-of-pocket loss from the beginning and not month-by-month. In other words, starting out in the first year with lots of net earnings that could be applied against any operating loss that might occur in three, four, five years, it had to be a cumulative over-all loss from the beginning of the operation of that train.

Mr. Maguire: And those conditions were agreed upon between your company, the Great Northern, and the North-[fol. 2683] ern Pacific, before the S. P. and S. arrangement was finally consummated, it was the result of negotiations regardless of the terms?

The Witness: What did you say, before the—

Mr. Maguire (interrupting): I say before the operation was actually agreed upon there had to be some give and take of compromise along the lines you suggested, is that it?

The Witness: Yes, sure.

Mr. Maguire: That is all.

By Mr. Torinus:

Q. Before we finish with operating matters I would like to ask you a question or two with respect to Exhibit 41 which has been distributed.

Mr. Torinus: I might say, Mr. Maguire, that there will be other witnesses who will cover in some detail the manner in which the S. P. and S. is supplied with cars for loading, but I would like to ask Mr. Turnburke whether or not he has had reproduced at my request certain correspondence

which is contained, copies of which are contained, in Exhibit 41 covering the matter of car supply on the S. P. and S.

A. Yes, I have taken it from our files in the executive department.

By Mr. Torinus:

Q. Exhibit 41, pages 1 to 6, consists of photostatic copies of either original letters in the president's files or photostatic copies of duplicate originals, is that right?

A. Yes, sir.

Q. Without reading in detail the contents of these letters would you just describe generally, Mr. Turnburke, the [fol. 2684] nature of this correspondence in Exhibit 41?

Mr. Maguire: Just a moment. The correspondence will speak for itself, and it is unnecessary for anyone to summarize or give a description of the nature of it. In the second place, when this exhibit is offered I am certainly going to object to it because it does not, and I do not believe it is offered for the purpose, the ostensible purpose, that has been mentioned by counsel. There are certain self-serving statements in there—

Mr. Torinus (interrupting): I haven't offered the exhibit yet, Mr. Maguire.

Mr. Maguire: You are asking him about the contents of this exhibit and I want to state my objection to it right now before you get into it too deeply.

Exam. Dishman: Mr. Turnburke, these letters do speak for themselves, don't they?

The Witness: That is right.

Exam. Dishman: There is really nothing that you could add that would throw any additional light on it?

The Witness: That is right.

Exam. Dishman: In view of that, Mr. Torinus, since they do speak for themselves—

Mr. Torinus (interrupting): I won't insist that Mr. Turnburke give his characterization of these letters. It is true that they do speak for themselves. I would like to ask him one additional question.

[fol. 2685] By Mr. Torinus:

Q. These letters, Mr. Turnburke, do you know whether or not the originals of these letters—when I use the term originals I embrace duplicate originals as well—were received and sent out in the usual course of business in the executive department?

A. Yes, they were.

Q. I would like to have you identify for the record the name of certain individuals who appear on these letters. Exhibit 41, page 2, was signed F. J. Gavin. Who was F. J. Gavin, Mr. Turnburke?

Mr. Maguire: Mr. Examiner, the exhibit speaks for itself. Mr. F. J. Gavin is shown on page 1 of the exhibit as president of the Great Northern Railway.

Exam. Dishman: Is that correct?

The Witness: Yes, it is.

By Mr. Torinus:

Q. Mr. C. E. Denney, whose name also appears on page 2, is the Charles E. Denney who appears on page 1 as president of the Northern Pacific, is that right.

A. Yes.

Q. Now going to pages 5 and 6 of the Exhibit 41, which also bears the name of F. J. Gavin at the end, although that imprint is rather indistinct, can you tell us who prepared that letter which appears on pages 5 and 6 of that exhibit?

Mr. Maguire: That is objected to as irrelevant and immaterial. The fact that it is over Mr. Gavin's, purports to be [fol. 2686] over his signature, I think is enough. It doesn't make any difference who dictated the letter.

By Mr. Torinus:

Q. I will ask Mr. Turnburke if he didn't prepare it.

Mr. Maguire: I object to that on the same ground as immaterial.

Exam. Dishman: You may answer whether or not you prepared it.

A. Yes, I did.

Mr. Torinus: Those are all the questions I have on direct with respect to Exhibit 41. That exhibit will be offered at the appropriate time.

By Mr. Torinus:

Q. Now, Mr. Turnburke, I would like to ask you whether or not the executive officials of the parent lines ever consider, within your personal knowledge, matters involving mileage rates to be paid by the S. P. and S. on refrigerator cars and other cars that are on the S. P. and S. system that may be subject to mileage rates, do you ever consider and determine upon per diem rates insofar as the S. P. and S. is concerned?

A. Yes, the ballots that are sent out for voting on these subjects by the Association of American Railroads naturally come to St. Paul, to the president of the S. P. and S., and after consultation with the vice-president in St. Paul of the S. P. and S. the ballot is cast without the people on the S. P. and S. knowing anything about it. That is true as to the increase in refrigerator car rates and the change in the per diem rates.

[fol. 2687] Q. Mr. Turnburke, can you describe generally the extent to which the executives of the parent lines in St. Paul participate in or supervise accounting matters involving the S. P. and S. insofar as such participation or supervision comes within your personal knowledge?

A. The accounting matters are usually handled between the comptrollers of the Great Northern and Northern Pacific and S. P. and S. On matters involving policy, such as depreciation rates, as I mentioned before, the declared value for excess profits, the question of amortization of equipment, are decided at the executive level and instructions issued to the comptroller of the S. P. and S. through the comptrollers of the Great Northern and Northern Pacific. They prepare joint letters and sign them jointly, giving instructions to the S. P. and S. as to what is to be done. They also exercise direct supervision over the preparation of income tax returns.

Exam. Dishman: Mr. Turnburke, when you speak about instructions being given to the S. P. and S. by the parent

lines, just who are the persons at the S. P. and S. who receive those instructions?

The Witness: Well, if it comes from the president of the Great Northern and the Northern Pacific, it is handled through the vice president at Portland.

Exam. Dishman: Vice president of—

The Witness (interrupting): Of the S. P. and S. at [fol. 2688] Portland. If the matter is an accounting matter, as I was just referring to, the instructions are from the president of the Great Northern and Northern Pacific to their comptrollers, who then instruct the comptroller of the S. P. and S. at Portland on accounting matters.

By Mr. Torinus:

Q. Is this generally true, Mr. Turnburke, the S. P. and S. set-up in Portland—when I speak of the S. P. and S. set-up I include the S. P. and S. Railway Company itself and its subsidiaries, the Oregon Trunk and Oregon Electric—are under the general charge of a vice president of the S. P. and S. at Portland, is that correct?

A. That is right.

Q. And any matters which are communicated to the S. P. and S. by the executive departments of the parent lines at St. Paul, whether it is a joint communication, which I understand is the usual thing, or it is a communication from one or the other of the parent line presidents or vice presidents in the executive department, would normally go to the vice president of the S. P. and S. at Portland in charge of the property, is that right?

A. That is right. But there is one little detail there that isn't right in your question.

Q. You correct me, then.

A. It usually is not a joi t letter. It is a separate letter written by the president of the Northern line who happens to be president of the S. P. and S. with a copy to the other [fol. 2689] president of the other Northern line, having been written after having secured approval from the other party.

Q. So that in the year 1955, for example, when Mr. MacFarlane happens to be president of the S. P. and S.

because he is president of the Northern Pacific, communication from the executive department in St. Paul to the vice president of the S. P. and S. at Portland would normally take the form of a letter written over Mr. MacFarlane's name to Mr. J. C. Moore, the vice president at Portland, with copy to Mr. J. M. Budd, is that right?

A. That is right. And before that letter is written the matter is cleared with Mr. Budd, Mr. Budd writing a letter to Mr. MacFarlane approving the project, if it is a material one, or giving approval over the phone if it is an immaterial item, a small item, minor item.

Q. And communications to S. P. and S. officials from the accounting department, for example, a communication from the Great Northern's vice president and comptroller to the S. P. and S. comptroller would be, then, a communication from Mr. J. M. Budd to your vice president and comptroller of the Great Northern to Mr. Alberson, comptroller of the S. P. and S., is that correct?

A. No, that is handled the other way around.

Mr. Maguire: Maybe you had better ask him instead of trying to tell him, Mr. Torinus.

Mr. Torinus: I was going to suggest that maybe Mr. Turnburke should testify in answer to my questions rather [fol. 2690] than my attempting to testify in the form of reading questions.

Mr. Maguire: I think that is a nice summary.

By Mr. Torinus:

Q. All right, you explain how it is, Mr. Turnburke.

A. Sir?

Q. You go ahead and explain.

A. Well, the instructions from the accounting people have, for as long as I can remember, for years been handled as a joint letter. In fact, that was a method that was handled in the executive department 25 years ago, when Mr. Ralph Budd was president and Mr. Donnelly president of the N. P., matters were usually handled by joint letter or a letter jointly signed by them, but it being handled in this other manner ever since I have been in the executive department, since 1942, by the president writing a letter

of instructions to the vice president of the S. P. and S. at Portland.

By Mr. Torinus:

Q. Mr. Turnburke, you have testified to quite a number of instances where the executive departments of the parent lines have considered upon and acted with respect to S. P. and S. matters. Are these instances that you have mentioned typical of a great many others or are they all the instances that you could think of?

A. They are typical and simply illustrative of a situation going on continuously.

Mr. Torinus: You may cross-examine, Mr. Maguire.

[fol. 2691] Cross examination.

By Mr. Maguire:

Q. Mr. Turnburke, you mentioned the fact in the early part of your testimony that Mr. Poore and you have made frequent inspection trips over the S. P. and S. and that Mr. Budd, the president of the Great Northern, the present president, makes frequent trips out to Portland and the Pacific Northwest.

A. Yes.

Q. You gentlemen of both of the companies also have railroads running out to Portland, do you not?

A. Yes, sir.

Q. And any examination of the S. P. and S. property, I suppose, is handled in conjunction with other duties with regard to your own individual companies, is it not?

A. If you mean we also make trips over our own lines at the same time, that is so. But when you go down on the Oregon Trunk and Oregon Electric you are nowhere near—

Q. (Interrupting) Oh, I understand that. But I mean you would make those trips in any event, both the presidents of the company and you and Mr. Poore who are executive vice presidents or executive assistants, also do make ordinary trips out there in connection with the Northern Pacific and Great Northern, respectively, do you not?

A. Certainly, Portland is an important point on both Northern lines.

Q. You stated that the Portland vice president advises [fol. 2692] the traffic vice president of the two St. Paul lines for charges, as I have in my notes, S. P. and S. company materials. I suppose that is the transportation of company materials, is it not?

A. Yes.

Q. Would you elaborate on that a little bit more? I don't quite understand what is meant by the word charges, who charges who, whether charges paid by the S. P. and S.?

A. Paid by the S. P. and S. for movement of company material over the Northern lines.

Q. I see.

A. And that is kept in balance between the two Northern lines. The S. P. and S. is buying materials in the east all the time and shipping them west.

Q. Oh, I see.

A. And they make a monthly report of what that is for the month and cumulative from the beginning of time, and those charges are even deferred to keep them equalized.

Q. Yes, so that neither one of the St. Paul companies has an advantage over the other so far as recompense so far as carrying S. P. and S. company materials?

A. That is correct.

Q. With regard to the purchase of locomotives, what corporation or corporations signs conditional sales contracts as purchaser of S. P. and S. locomotives?

A. The manufacturer you mean?

[fol. 2693] Q. No, for the purchase of locomotives to be used on the S. P. and S., if they are bought on a conditional sales contract, who signs, I mean what corporation or corporations signs the conditional sales contract. Isn't it a fact that the S. P. and S. is the only company that—

A. (Interrupting) Yes, that is right.

Q. And the S. P. and S. similarly is the only company which is responsible under any equipment trust services that are sold?

A. That is true with one exception. I think there is one equipment trust outstanding on which the two parent lines have guaranteed payments, if that is what you mean.

Q. Yes, but ordinarily that is the rule, the S. P. and S. is solely liable under the equipment trust?

A. That is true.

Q. With regard to all of these other matters down to but not including the special handling of accounting procedures, it is a perfectly normal thing, is it not, where you have a resident vice-president at Portland, in the case of the S. P. and S., a resident vice-president of any corporation not to take steps involving matters of substance in the company's affairs without the approval of the president of the company? That is perfectly normal procedure, is it not?

A. Yes, that is true, but I think some of those matters are not of substance, such as the changing of numbers on trains and burning weeds and things of that kind.

[fol. 2694] Q. Of course, maybe it is true that the president likes to keep his hands more tightly on the reins so he won't even let the vice-president change the name of the train, defers to the president of the corporation in any decisions to the extent that the president orders him to do so?

A. That is true.

Q. So far as accounting matters are concerned, the comptrollers of the two St. Paul companies are acting as representatives of their respective presidents, are they not, in the consideration of these matters?

A. Yes, that is right.

Q. And their respective presidents are both of them members of the executive committee, whether it has regular meetings or not, of the S. P. and S., isn't that true?

A. That is true.

Mr. Maguire: That is all, thank you, Mr. Turnburke.

COLLOQUY BETWEEN EXAMINER AND COUNSEL REGARDING OFFER IN EVIDENCE

Mr. Torinus: At this time I would like to offer in evidence Exhibit 41.

Mr. Maguire: Exhibit 41, Mr. Examiner, shows nothing that can not be testified to and will not be testified to by other witnesses, and in itself it doesn't show a thing except

it is an inquiry, in the first place an inquiry, from the Association of American Railroads as to the furnishing by the St. Paul stockholders of the S. P. and S. of equipment to the S. P. and S. Now, I submit that the whole purpose of this exhibit is not to show a simple fact of that [fol. 2695] kind through one of the top executives, such as Mr. Turnburke. Mr. Turnburke has in his files copies of letters which contain what are self-serving declarations and are put in this record solely for that purpose. I will call the Examiner's attention to page 3, the last sentence in the letter on page 3. I will also call attention to the second paragraph on page 5. Now, that, I submit, is the purpose for the introduction of these letters, because otherwise they are routine letters which could be handled, the subject matter could be handled, by other witnesses. And if it is merely offered for the fact, to prove the fact, that the S. P. and S. ratio of ownership of cars on line, or the ratio of cars on line, to the ownership runs from three hundred to four hundred, as shown on page 1 of the exhibit, that is one thing. If the Great Northern and the Northern Pacific make it a habit or a practice of supplying the S. P. and S. with equipment that is needed, that is another matter, and one very simple and very easily susceptible to proof without resorting to cumbersome machinery of putting in whole copies of letters including even inquiries from the National Industrial Traffic League, which shows on page 4. Now, that inquiry in there is merely as a foundation for putting in the letter commencing on page 5 which contains, as I say, really propaganda for the intervenor's contentions in this case. It doesn't have any effect, should have no effect, as to the main issues which are here under debate and [fol. 2696] which are here attempting to be met by the testimony of the officers of the Northern Pacific and Great Northern, such as we have had yesterday and today. It doesn't prove anything, but it is merely something to which counsel will take occasion to refer and is a conclusion and is further on the part of the officers of the companies writing these letters and also self-serving. I think it would be entirely wrong and entirely irrelevant to admit these letters to evidence.

Mr. Torinus: Mr. Examiner, these letters, of course, are not propaganda and, of course, they are not self-serving because they were all written before this particular litigation arose or was even dreamed of. They are simply letters kept in the ordinary course of business in the president's files. It is true that we will have other testimony bearing upon this subject, but the other witnesses who will testify do not have access to the president's files. I am not sure that the knowledge of the other witnesses will extend over the period of time covered by these letters. These letters are perfectly competent to indicate the normal, usual course of dealing through the years.

Mr. Maguire: What are you attempting to prove by them?

Mr. Torinus: I haven't finished, Mr. Maguire.

They are letters kept in the files in the ordinary course of business. They show, as Mr. Maguire knows, and as they indicate on their face, the manner in which the parent lines not only keep the S. P. and S. supplied with cars, but the manner in which they have done so for years, and they show that they have advised the Association of American [fol. 2697] Railroads, which is interested in the supply of cars to their car service bureau of this plan. It is one item of evidence which, I believe, can only be introduced through this witness. If Mr. Maguire doesn't think it proves anything, he is entitled to his opinion. But I submit that the evidence is perfectly admissible and that the Commission is entitled to determine what weight should be attached to this exhibit.

Mr. Maguire: There is one further thing here, too. It is noteworthy that Mr. Torinus refrained from asking Mr. Turnburke questions about the subject matter of these letters. Mr. Torinus said to Mr. Turnburke, "I will not ask you about this", in substance he said, "because there will be other witnesses who will testify to it". Now, if this question of supplying the S. P. and S. with cars and equipment is one which is within the peculiar knowledge of Mr. Turnburke due to his long association with the executive department of the Great Northern why was not a question asked him about it? All he was asked to do was to say, did you dig these out of the files in the executive depart-

ment of the Great Northern. And there is nothing in these letters, the latest of the letters is nearly nine years old, it is between eight and nine years old, December 24, 1946, there is nothing to show what the present practice of the two Northern companies is with respect to supplying equipment to the S. P. & S., and therefore that is not material [fol. 2698] because we are dealing with present conditions and not past history. But I submit that the sole purpose of having Mr. Turnburke go through the files on this is because of certain statements which were made in connection with other matters by officers of the Great Northern and the Northern Pacific, and particularly—yes, by both of them.

Mr. Torinus: Mr. Examiner, we aren't going to put in our whole case by one witness. It might be that Mr. Turnburke could tell a great deal about the furnishing of cars.

Mr. Maguire: He didn't have a chance to.

Mr. Torinus: Well, you objected to his characterization of the letters.

We are going to put in, as I have said, a great deal of testimony on this subject. This is one item of evidence I think is perfectly competent.

Mr. Maguire: Then I ask that ruling on the admission be deferred, that it merely be marked for identification at this time, until it is connected up by proper evidence.

Mr. Torinus: I don't see that it needs to be connected up any more than it has already been connected up. These letters are letters from the president's files kept in the usual course of business, and even if we had no other testimony on this subject and even if the only testimony we had on the subject is nine years old, which will not be the case, these letters are still competent evidence.

Mr. Maguire: A letter kept in the files in the usual course [fol. 2699] of business is not by reason of that fact admissible in evidence. That is not at all the rule.

Now, counsel hasn't yet said what he expects to prove by these letters. I asked him and he told me not to interrupt him, he said he hadn't finished yet, and he has finished and still he hasn't said what he expects to prove by these letters.

Exam. Dishman: Do you care to state that, Mr. Torinus, what conclusions you expect the Commission to draw from this data?

Mr. Torinus: Certainly. These letters show, and I think I have already stated it, but I will repeat it because Mr. Maguire doesn't seem to realize that it has been covered, these letters show the normal course of business by the Great Northern and Northern Pacific through the years in furnishing the S. P. and S. with cars. They show, not only that it has been done, but they show that we have notified the Association of American Railroads which has its own car service bureau that we would see that the S. P. and S. was supplied with cars. It is a piece of evidence in and of itself, consisting of correspondence kept in the usual course of business to be considered with other evidence that we will have in the case relating to the manner in which the S. P. and S. has been regularly through the years supplied with cars by the parent lines. That is all I have to say.

Exam. Dishman: I don't know how relevant this data is, but the exhibit will be received.

What you have said about it, Mr. Maguire, will be in [fol. 2700] the record for the Commission to consider as to whatever weight it may accord it.

(Defendant's Exhibit No. 41, Witness Turnburke, was received in evidence.)

Mr. Maguire: If it is to be received, I move that the second paragraph on page 5 be stricken. I also move that the last sentence on page 3 be stricken.

Exam. Dishman: What do you have to say to that, Mr. Torinus?

Mr. Torinus: Well, I don't have anything to say about it. These letters are in, these paragraphs are part of the letters, they are part of the story told by these letters, I think they are perfectly relevant and admissible.

Mr. Maguire: The mere fact, Mr. Examiner, that a portion of a letter which is objected to is part of a letter which may otherwise be admissible doesn't mean that there is anything sacred necessarily about that particular paragraph. And the story is told without these self-serving declarations and I move that they both of them be stricken.

Exam. Dishman: The motion will be overruled. The data will be left intact for the Commission to determine whatever weight it will accord it.

The witness is excused.

(Witness excused.)

Exam. Dishman: We will now recess until 2 o'clock.

(Whereupon, at 12:25 p.m., a recess was taken until 2:00 p.m. of the same day.)

[fol. 2701] AFTERNOON SESSION 2:00 p.m.

Exam. Dishman: The hearing will come to order.

Mr. Rockwood: I will call Mr. Thomas. You have been sworn, Mr. Thomas?

Mr. Thomas: I have.

W. H. THOMAS was sworn and testified as follows:

Direct examination:

By Mr. Rockwood:

Q. Will you please state your full name, your residence, and occupation to the reporter?

A. It is W. H. Thomas, residence, Portland, Oregon. My profession is consulting forest engineer.

Q. Will you please give us a summary, Mr. Thomas, of your professional experience? In the first place, you are not employed by the S. P. and S., are you?

A. No.

Q. Will you please give us a summary of your professional experience?

A. My first work in the timber started in 1902. From the period of 1902 to 1906 I spent in cruising timber and also running compass in the Idaho white pine region in Northern Idaho. About six months of that period was spent in scaling logs in sawmills and logging operations

and about eight months in cruising timber in the Payette district in Southern Idaho.

From 1906 to 1911 I attended and graduated from col-
[fol. 2702] lege, but I spent my summers cruising timber in the Douglas fir region in Oregon and Washington.

From 1911 to 1912—

Q. (Interrupting) Just a minute. You obtained a collegiate degree?

A. I did; in civil engineering from Stanford University.

Q. Go ahead.

A. From 1911 to 1912 I acted as logging engineer for the Wisconsin Logging and Lumber Company and the Matson Lumber Company, the former being in the State of Washington on the lower Columbia River and the latter in the State of Oregon on the lower Columbia River.

In 1913 I opened an office in Portland to practice as a forest engineer. This practice continued from 1913 to 1918, and my work consisted principally of cruising timber, preparing topographic maps for logging operations, surveying logging railroads, and in some instances constructing them, and advice on timber valuations.

In 1918 I was in charge of an operation in Clatsop County, Oregon, for the United States Spruce Division.

In 1919 I returned to practice, and from that date to the present I have acted in my capacity as a forest engineer. My work has included cruising timber—

Exam. Dishman (interrupting): Will you explain just what you mean by that?

[fol. 2703] The Witness: Cruising timber, Mr. Examiner, is a term we use for estimating the timber volumes on a given area of land.

A. My work covered timbered areas in Oregon, Washington, Idaho, Montana, British Columbia, Colorado, California, New Mexico, and Louisiana.

I have been retained by a large percentage of timber owners and operators on the Pacific Coast, as well as several federal agencies, such as the Department of Justice, the Reconstruction Finance Corporation, the Bureau of Internal Revenue, and many banks and trust companies.

By Mr. Rockwood:

Q. In the State of Oregon, in your experience, how extensive has been your coverage of the state? To what extent have you been in the various timber areas of the State of Oregon?

A. I might express it this way, Mr. Rockwood, with the exception of a few possible townships in national forest ownership, lying at high altitudes in the sub-Alpine areas, I can safely state I have been in every township in the State of Oregon.

Q. Which has timber?

A. Yes, sir.

Q. Have you at my request prepared data relating to the timber resources in the States of Oregon and Washington?

A. I have.

Mr. Rockwood: Mr. Examiner, I have three exhibits that will be discussed by Mr. Thomas. The first is a statistical [fol. 2704] statement which I would like to have marked for identification as Exhibit No. 42.

Exam. Dishman: All right.

(Defendant's Exhibit No. 42, Witness Thomas, was marked for identification.)

Mr. Rockwood: The second is a map of the State of Washington, which is prepared and circulated by the Northern Pacific Railway Company, and, incidentally, for convenience I have left it in these envelopes, but I want Mr. Maguire to understand that any self-serving statements of the excellence of the Northern Pacific in these folders is not offered as proof of that fact.

Exam. Dishman: That will be identified as Exhibit No. 43.

(Defendant's Exhibit No. 43, Witness Thomas, was marked for identification.)

Mr. Rockwood: And the third is a Rand McNally map of the State of Oregon, which bears the label in the lower right-hand corner "Santiam Branch of the Oregon Electric Railway Company".

Exam. Dishman: That will be identified as Exhibit No. 44.

(Defendant's Exhibit No. 44, Witness Thomas, was marked for identification.)

Mr. Rockwood: I may say, Mr. Examiner, that the Washington map, which is Exhibit 43, is offered to enable this witness to locate the areas which he will discuss by county lines as shown on this map. It is the county line delineation on this map of which we are particularly interested here.

[fol. 2705] That is true also with respect to Exhibit No. 44, the map of Oregon. There will be some further discussion of the details of this map. This map of Oregon, Exhibit No. 44, has on the reverse side of the exhibit a State Highway map of the State of Oregon. The witness may comment some on the location of state highways in connection with his discussion of the possible means of disposing of timber from various areas of the state. So that when I offer it I will understand that the map, the face side and the reverse, are both to be received in evidence.

By Mr. Rockwood:

Q. Mr. Thomas, taking first your Exhibit 42, that was the exhibit which you prepared to show timber resources in the two states, is that correct?

A. That is right.

Q. Just as a preliminary matter, will you turn to Pages 2, 3, 4, and 5 of the exhibit, the first page being the cover page, and without going into detail tell the pattern of the data which you show in these four pages?

A. On Pages 2 and 3 I show the timber quantities, the depletion, and the net growth of timber quantities from 1910 to January 1, 1954, expressed in millions of feet.

Pages 2 and 3 cover my study, showing these quantities for the State of Washington.

On Page 2 it is broken down by counties on the so-called west side of the state. By that, I mean that area in the State of Washington lying west of the summit of the Cascade Mountains.

[fol. 2706] On Page 3 of Exhibit 42 I show a similar breakdown over those decades of the last five years of the '50's for the east side of the State of Washington, and on line 6 is a summary of both the east side and west side, showing the total quantities.

Q. Why did you make that distribution between east side and west side in the State of Washington?

A. It is helpful in analyzing timber depletion and net growth because the timber found lying west of the summit of the Cascades is in what we call the Douglas fir region. The area lying east of the Cascades is in the Ponderosa pine region. The characteristics of the timber in each region is entirely different, and the segregation is made principally for that purpose.

Q. All right, now tell us on Pages 4 and 5, to the extent that it is necessary, in general what you have shown on those pages.

A. Pages 4 and 5 correspond to Pages 2 and 3, only these pages of 4 and 5 are for the State of Oregon, Page 4 being the quantities previously mentioned, broken down by counties for the west side of the state, and on Page 5 simply timber quantities, net growth, and depletion for the east side of the state.

I might say that the same forest composition exists in Oregon west of the Cascades and east of the Cascades as does in the State of Washington.

Q. In other words, the fir west of the mountains and the Ponderosa pine east of the mountains?

A. That is right.

[fol. 2707] Q. Now further discussing simply the mechanics of the exhibit, and we will use for example Page 2, the total on line 20 is the total timber on the west side of the State of Washington as of January 1, 1910, as you estimate it?

A. Yes.

Q. You do not show depletion by counties. The next column is net growth—you show depletion simply in total?

A. That is right.

Q. And then net growth, and then come up to a figure, January 1, 1920. Arithmetically, how is that figure on line 20, January 1, 1920, computed?

A. That is an addition of all of the timber quantities in each county, as shown in the tabulation.

Q. You start with the January 1, 1910, figure—

A. (Interrupting) From January 1, 1910, to January 1, 1920, I have no data available in my possession.

Q. Just a minute, Mr. Thomas, we will come to that. I think I can develop this without hearing criticism from my friend across the table.

If we start with the quantity on line 20, January 1, 1910, subtract the figures in column 3 for depletion, add the figures in column 4 for net growth, we arrive at the January 1, 1920, figure, is that right?

A. Yes.

Q. And by decades is the same pattern followed up to [fol. 2708] January 1, 1950?

A. That is right.

Q. And then the last three columns, starting from the quantities of January 1, 1950, show the experience in the last five years to January 1, '54, is that correct?

A. Yes.

Mr. Maguire: While we are at it, Mr. Rockwood, could you state the source of these figures?

Mr. Rockwood: I am going to ask him in a moment. He is going to develop that in some detail.

By Mr. Rockwood:

Q. And the same pattern as you have described for Page 2, the mechanical pattern, is followed on Pages 3, 4, and 5, developing these data by decades and for the last five years?

A. Yes.

Q. Tell us from what sources you derived your working data and what use was made by you of your working data to produce the figures shown on Pages 2, 3, 4, and 5.

A. I find in my experience in having had to prepare schedules of this kind before that the best over-all measure of these quantities showing of so-called merchantable timber is that shown by the Forest Service in their economic survey. The economic survey was started in 1928, at least the Congressional Act was passed in that time, instructing the Forest Service to make a national survey to show the

timber quantities in the various states, the depletion, the [fol. 2709] growth, for economic reasons that I believe are obvious. I was invited in to act as a consultant in setting up this survey by the Forest Service and have had considerable experience in the preparation of these data. However, over the many years that I have had occasion to refer to this information prepared by the Forest Service, I have found by experience that due to the very extensive methods that the Forest Service must employ to make such a survey that there is differences of opinion as to the exact accuracy of the results. I, therefore, have used the Forest Service information and corrected it to conform to checks that I have personally made so that the results as shown in Exhibit 42 in Pages 2, 3, 4, and 5, is my opinion of the timber quantities and the net growth.

The depletion is more or less factual, and that is as I have accepted from Forest Service publications showing the drain in these two states by these years shown in Exhibit 42.

Q. Are those depletion figures published by counties?

A. They are. From 1925, to be exact as to date.

Q. Why is it that you have not shown a breakdown by counties as of January 1, 1910, and for the depletion in that decade from January 1, 1910, to January 1, 1920?

A. For the reason that you just mentioned. I have no information as to the drain or depletion of timber quantities in the States of Oregon and Washington by counties in that period of time, but I do have that information for the [fol. 2710] State as a whole, broken down by the east side and the west side.

Q. What is included in the term that you use, "depletion"?

A. Depletion covers principally the drain on our commodity, which drain is principally cutting for commercial purposes. It does include in one particular instance in Oregon a heavy loss caused by the so-called Tillamook fire.

Q. On Page 4 is there any reference to the results of the Tillamook fire?

A. I have a footnote showing that fire loss as added into the drain.

Q. Which of those footnotes, 1 or 2 applies to the Tillamook fire?

A. Both of them.

Q. Are they represented in the depletion figures for Clatsop County in column 9 and for Washington County in Oregon shown in column 9 or Tillamook County in Oregon shown in column 9?

A. Yes.

Q. Without going into too much detail, how did you determine those depletion figures for the consequence of the Tillamook fire?

A. The Tillamook fire occurred in August of 1933. The industry was under the O.P.A. jurisdiction at that time, which limited the operators to the amount of timber that could be logged. Representations were made to the O.P.A. requesting the acknowledgment of this fire as being a national catastrophe, and they so considered it and allocated 5 per cent of the national production to salvage of [fol. 2711] the Tillamook burn. I was retained by the owners, owners of timber in this burned area, to set up a logging program to attempt to salvage this timber. I, therefore, had intimate knowledge of the loss, and I have had occasion to follow the salvage. And this net loss that I show is my opinion based on information that I have developed myself as to what we actually lost in the Tillamook fire.

Q. That is the gross timber damage minus that which was salvaged?

A. That is right.

Q. During the hearing in this case in June 1954 Mr. Kiley, president of the Milwaukee, testified and, beginning at Page 50 of the transcript, he commented on the relative production of timber products in the States of Washington and Oregon and drew the conclusion that whereas Washington in years past had been the principal timber producer, a change had occurred on that; Oregon at the present time is producing a greater quantity of timber. What conclusion do you draw from your data with respect to the relative productions in the two states at various times?

A. Not having Mr. Kiley's figures, but just answering your question, my conclusion is drawn from the figures, the data that I present in Exhibit 42, is similar to that—

Mr. Maguire: Pardon me for the interruption. Is similar?

The Witness: Yes.

A. (Continuing) —for example, in the decade from 1920 to 1930 the State of Washington's average production per [fol. 2712] year was 7,576,000,000 feet, as shown in my Exhibit 42.

By Mr. Rockwood:

Q. That is the total east side and west side?

A. That is right.

Q. Just a minute so that we will follow that computation. Is that the total figure on line 6 of column 6 divided by 10?

A. On Page 3?

Q. On Page 3, I mean.

A. Yes.

Q. In other words, seventy-five billion in the decade which is at the rate of seven and a half billion per year in the decade?

A. That is right.

Q. All right, go ahead with your comparison.

A. In the same decade in the State of Oregon the average annual production in both the west and east side of the state was four billion one hundred seventy and eight tenths million feet as compared to the last five years, from 1950 to January 1 of 1954, where the total production on the west side and the east side in the State of Washington averaged only three billion nine hundred two and eight tenths million.

Mr. Maguire: I am sorry. I have lost you. What column is that?

The Witness: That would be on page—I just gave you the first five years for the State of Washington, and that is what you are asking about, Mr. Maguire?

Mr. Maguire: The figures you gave, you gave this figure, [fol. 2713] and I couldn't find it.

By Mr. Rockwood:

Q. It is derived, is it not, Mr. Thomas, on Page 3 in column 15?

A. Yes.

Q. Which is a depletion for a five-year period. You have a total depletion of nineteen billion five hundred fourteen million, divide that by five because it is five years, and you get this figure of three billion nine hundred two million, which Mr. Thomas computed.

Mr. Maguire: Oh, I see.

By Mr. Rockwood:

Q. You were about to state the corresponding figure for the last five years in the State of Oregon, Mr. Thomas.

A. In the State of Oregon the five years, 1950 to 1954, the annual depletion as shown in the exhibit is seven billion nine hundred thirty-three and two tenths million.

Mr. Maguire: I get your arithmetic.

Could I ask a question for clarification?

Mr. Rockwood: Sure.

Mr. Maguire: You really have four years there, haven't you, Mr. Thomas?

The Witness: No. It is 1950, 51, '52, '53—

Mr. Maguire: And then your next figure is January 1954, the very beginning of '54.

By Mr. Rockwood:

Q. Is that an error all the way through, Mr. Thomas?

[fol. 2714] A. By golly, I believe it is.

Q. In other words, you carried this through the year 1954, did you not?

A. January 1, 1954.

Mr. Maguire: I think if we will just divide those figures by four instead of five it will be the same relative relationship.

By Mr. Rockwood:

Q. Let's get this straight.

A. No, it is four years.

Q. Then we divide those by four instead of five?

A. I can change those very quickly, if I may.

Q. Sure. Go ahead and correct those figures. The average for Washington for the last four years up to January 1, '54.

A. In the State of Washington the average annual depletion for both west and east side should read four thousand eight hundred seventy-eight and five tenths billion.

Mr. Maguire: Billion or million.

The Witness: Million.

By Mr. Rockwood:

Q. And what is the corresponding figure for Oregon?

A. And in Oregon nine billion nine hundred sixteen million two hundred thousand.

Q. Point two?

A. That is right.

Q. Nine nine one six two point two?

[fol. 2715] A. That is right.

Mr. Maguire: Pardon me. I don't want to haggle around above five thousand feet, but I think it is point five.

The Witness: Did I say point two?

Mr. Maguire: Yes.

The Witness: I have it down here as five.

By Mr. Rockwood:

Q. This Northern Pacific map, which has been marked as Exhibit No. 43, shows the county lines, does it not, so that you can determine the location of the quantities which you have shown by counties by the various areas of the states as shown on this map, can you not?

A. Yes.

Q. Now, the Oregon map similarly shows the county subdivisions, county lines, so that you can spot the location of the various counties which you referred to on Pages 4 and 5 by reference to this map. Referring first to your map, the Oregon map, what is the significance of the red line and the green area which you show in Linn County, Oregon?

A. That is an area supporting a certain volume of recoverable timber that is tributary to the Oregon Electric

Branch, extending from Albany, Oregon, easterly to two termini, one at Foster and one at Dollar.

Q. And the red line on the map is the railroad itself, the so-called Santiam Branch of the Oregon Electric?

A. Yes.

[fol. 2716] Q. You have shown from the figures that you have just given that the quantities produced in the State of Oregon have increased since the decade of the '20's so that now Oregon is producing more than is now being produced in the State of Washington. Has that increase in production in Oregon been uniform throughout the state or has it reflected itself in various districts?

A. It has not been uniformly so. The rate of production or depletion in the northwest counties of the State of Oregon have dropped as the activity in lumbering extended south from Portland. This is best shown by some percentages that I might mention.

I have taken a line through Eugene, which is at the upper head of the Willamette Valley.

Q. That is near the north line of Lane County shown on this map?

A. That is the north line of Lane County. Considering all the counties south of that line as southern counties and counties north of that line as the northwest counties—

Q. (Interrupting) All this is west side you are talking about?

A. This is the west side of the state, in the Douglas fir region.

In the 1920's the so-called northwest counties produced about 75.8 per cent of the total production of the west side of the state, and the so-called south counties produced about 24.2 per cent. In the last four years this is almost reversed. The northwest counties have dropped down to a production of about 38.3 per cent of the total west side production, and [fol. 2717] the southern counties are producing about 61.7 per cent of the west side production.

This is still more significant if one considers the two northwest counties, say Clatsop County and the Columbia County.

Q. In the extreme northwest corner of the state?

A. Yes. They are shown on the map.

Q. What railroad serves those counties?

A. They are served by the S. P. and S. Railroad.

Q. The so-called Astoria and Vernonia branch?

A. That is right.

Q. Proceed with your production in those counties.

A. In the 1920's, as shown by my Exhibit 42, these two counties produced 35.3 per cent of the entire production of the State of Oregon. The last four years they have produced but 2.5 per cent of the total production or, expressed in another way, in the 1920's these two counties were producing at the rate of 1,138,000,000 feet, and in the last five years are only producing—

Q. (Interrupting) Just a minute. Four years, you have to correct that to four years.

A. (Continuing) —in the last four years, I beg your pardon, were producing only about 15 per cent of that figure.

Q. What has been the history of the production of logs and sawmill operations in these two counties that you refer to served by the S. P. and S. in Clatsop and Columbia [fol. 2718] County in the last 10 or 15 years?

A. Will you repeat that question, please?

(Question read.)

A. Well, the production has practically come to a standstill because of the almost complete depletion of the so-called merchantable timber in these two counties. A great many sawmills that I have been very familiar with have had to suspend operations and dismantle their mills or move down to the southern part of the state. Clatsop County has, as shown in my Exhibit 42, approximately five billion two hundred eighty-six million left as of January 1, 1954, and Columbia County only three hundred seventy-nine and four-tenths million.

Clatsop County is owned principally now by the Crown Zellerbach Corporation.

Q. You mean the timber in Clatsop County?

A. The timber and a large portion of the timberland. They also have extensive ownership of cut-over lands in Columbia County.

Longview Fibre Company has a fairly large ownership of cut-over lands in these two counties, and the Long-Bell

Lumber Company owns some 50,000 acres of cut-over lands and a small amount of virgin timber.

The Crown Zellerbach Corporation is a paper company with mills situated at West Linn and St. Helens, Oregon, and Camas, Washington.

Q. Let's get those places identified. Where is West Linn? [fol. 2719] A. West Linn is practically in Oregon City, a point about 15 miles south of the City of Portland and on the Willamette River.

Q. And where is St. Helens?

A. St. Helens is on the south bank of the Columbia River in Columbia County, 28 miles downriver from the City of Portland.

Q. And where is Camas?

A. Camas is on the north bank of the Columbia River in Clark County, Washington, a distance of about 16 or 17 miles east of Vancouver, Washington.

Q. All right, proceed now with your explanation of Columbia and Clatsop Counties.

A. These are paper products producing mills. The Crown Zellerbach is very active in setting up a sustained yield on their lands in Columbia and Clatsop Counties and currently are logging portions of this remaining five billion feet of merchantable timber, which, by the way, constitutes approximately 72 per cent western hemlock or Sitka spruce. Both the hemlock and the spruce are paper logs, suitable for paper products, and these logs are shipped by the Crown Zellerbach Corporation by water, towed by the Western Transportation Company, a subsidiary of Crown Zellerbach and a common carrier, and delivered to the three mills that I have previously mentioned.

There is a small production of Douglas fir logs, being probably 28 per cent of the virgin timber currently being cut, and those logs are bartered. The demand for logs has [fol. 2720] become so keen with the depletion in this northwest area that, for example, the Crown Zellerbach Corporation finds that they are better off instead of selling them on the open market to trade them to other companies who have logging operations for pulp logs, such as hemlock and white fir and spruce. So that those logs that are traded by Crown Zellerbach Corporation go principally to the M. & M. Wood-

working Company, which is a client of mine—I am speaking from personal knowledge—and manufactures into plywood or doors.

Q. And their plant is at Portland?

A. And their plant is located north of Portland. This results in no resulting traffic to the S. P. and S. Railroad from the timber depletion in Clatsop County.

In Columbia County, as shown by my exhibit, there is about 379,000,000 feet, which is owned principally by the Long-Bell Lumber Company, with a sawmill at Vernonia, Oregon, a point on the terminus of the Vernonia Branch of the S. P. and S. Railroad, and a portion of this 379,000,000 is principally on lands owned by the Longview Fibre Company.

I might say in passing that in estimating this volume of the remaining timber as of January 1 of '54 we find that due to utilization practices our ideas have had to change considerably over the past, and a good share of this 379,000,000 is in so-called salvagable material that was left behind by earlier logging operations. The Longview Fibre Company is also setting up a sustained yield program, not [fol. 2721] only on this area, but in other places, and in the proper management of such a program it is wise, economically wise, to go over these lands and salvage the remaining trees left by earlier logging operations and, at the same time, thin out occasionally the younger age class timber.

The quantities recovered by the Longview Fibre Company is dumped in the Columbia River and towed across to Longview, Washington, where their mill is located. This obviously would constitute no resulting traffic for the S. P. and S. Railroad.

Long-Bell, on the other hand, owns as of January 1, 1954, approximately one hundred fifty to one hundred seventy-five million feet of timber. This is merchantable timber and conceivably will be cut into lumber at Vernonia and shipped without competition on the S. P. and S. Railroad. There is a doubt in my mind as to how long this operation may continue in that way because, of my own knowledge, I know there is thoughts now of dismantling the Vernonia mill and converting these logs into lumber at Long-Bell's sawmill at Longview, Washington.

Q. If Long-Bell decides to run the Vernonia mill until they cut out the timber now available to that mill as you have described it, about what would the life of that operation be?

A. Approximately two or three years.

Q. To your knowledge are there any other substantial sawmill operations along that branch leading up to Vernonia?

A. No, there are none.

Q. Can you give us or tell us anything about any other [fol. 2722] lands acquired in Columbia County by Crown Zellerbach Corporation?

A. Yes. The Clark and Wilson Lumber Company was a major operation in Columbia County. The Clark and Wilson Lumber Company of Delaware was incorporated as of January of 1928. I cruised all of their timber in that merger, and there was considerably over three billion feet. That has all been logged. The Clark and Wilson Lumber Company has had to go out of business, and their land, some eighty-five or ninety thousand acres, was sold to the Crown Zellerbach Corporation, I believe, in 1945.

Q. What has Crown done with that land?

A. Crown is handling those cut-over lands in a similar way as they are cut-over lands in Clatsop County. They are setting it up on a sustained yield and well-managed tree farm basis.

Q. How long will it take before you will have merchantable timber on that Clark and Wilson line?

A. That will be about a hundred years.

Q. A hundred years before there is any merchantable timber coming off of that land?

A. Yes.

Q. Turn, will you please, Mr. Thomas, to Page 6 of your exhibit and tell us what you have shown on that page and the succeeding Page 7.

A. On Page 6 and on Page 7 I have taken the timber quantities that I have shown in Exhibit 42 on Page 5 as being the total timber quantities in the State of Oregon as [fol. 2723] of January 1 of '54 and distributed these quantities by counties and under the headings of railroads or transportation companies to which this timber is logically

tributary to. For example, on Page 6, Column 3, Line 3, which is Clatsop County, Oregon, I show that five billion two hundred eighty-six and nine-tenths million feet of timber that I previously referred to as remaining in Clatsop County and place it under the heading "Spokane, Portland, and Seattle Railway Company or Western Transportation Company".

Q. Now, just stop right there. Why did you class that as tributary to both of those carriers?

A. The Spokane, Portland, and Seattle Railway Company has a branch called the Astoria Branch, extending from Portland down to Astoria on the south bank of the Columbia River. This timber can be physically loaded on cars of the S. P. and S. on that branch or could be manufactured into lumber if a mill was available, and could manufacture it into lumber and/or a mill was available and could buy this timber. The timber, as I explained before, was owned by the Crown Zellerbach Corporation with mills, pulp mills, located at the three points previously mentioned, and the Western Transportation Company is a subsidiary of Crown Zellerbach Corporation, whose business is to tow logs or barges on the Columbia River and the Willamette River up as far as West Linn so that inasmuch as the Crown Zellerbach, to my knowledge, is shipping these logs to their pulp mills by the Western Transportation, I have listed it, this five billion two hundred eighty-six and nine-tenths million, [fol. 2724] as being available to both carriers.

Q. Do you know what carrier serves the three paper mills of Crown Zellerbach on its outbound finished product? Do you know?

A. Western Transportation Company.

Q. Where do they barge the paper products?

A. They barge the paper products from Camas.

Q. From Camas to where?

A. Portland.

Q. And St. Helens to Portland, do you know whether they are doing that now?

A. I don't know for sure. I don't know.

Mr. Maguire: Pardon me. Just to get something clear, you say they are barging from West Linn to Portland?

Mr. Rockwood: Sure. Just below the Falls of Oregon City up to Portland.

Exam. Dishman: Is that your understanding?

The Witness: I beg your pardon?

Exam. Dishman: Is that your understanding about the origin of lumber?

The Witness: I know it to be a fact.

Mr. Maguire: West Linn is below the Falls, isn't it?

The Witness: It is. It is right at the Falls.

By Mr. Rockwood:

Q. As a matter of fact, the power from the Falls serves the mills?

A. Yes.

[fol. 2725] Q. Is there any railroad at West Linn?

A. No. The Southern Pacific is on the east side of the river and West Linn is on the west side of the river.

Q. Is that explanation you have given of Western true to every reference you have shown to Western Transportation Company on these pages?

A. Yes, it is.

Q. Coming to Column 4, for Linn County you show as tributary to the Oregon Electric Railway Company eight billion three hundred seventy million feet. That precise figure does not appear on your Page 4, showing the total timber in Linn County at the present time. How did you determine that figure of eight billion three hundred seventy million feet as tributary solely to the Oregon Electric?

A. That is based on personal—

Q. (Interrupting) First, in what area is that located by reference to your map?

A. That area is in Linn County, Oregon. I do not know the exhibit number.

Q. Exhibit No. 44 is the Oregon map.

A. Exhibit 44. And it is an area lying east of the City of Albany and served by the Oregon Electric Railroad.

Q. Is the timber within the area shaded in green on your map, Exhibit 44?

A. That is right.

[fol. 2726] Q. Tell us how you determined that quantity of eight billion three hundred seventy million feet, please.

A. The outside boundary of that area designates the land area that is physically tributary to the Oregon Electric extension. If you will note, on the north it drops down into the Crabtree Creek, and that timber in that area is owned by the Willamette Valley Lumber Company and goes to Dallas, Oregon, and on the northeast portion of this area is principally—well, may I say on the north side, is bounded by lands and timber that I know from personal experience will go to the M. & M. Woodworking Company and the eastern boundary is the summit of the Cascades. There is practically no timber east of this boundary, as far as that goes, in merchantable quantities.

The southern boundary is timber that will go down the McKenzie River to mills on the McKenzie River at Springfield, Eugene, or places of that kind.

In that total area I computed there to be, according to my survey, 473,000 acres of forest land. As of January 1 of 1954 approximately 160,000 acres has been cut over, leaving 313,000 acres in virgin timber. My personal estimate of the recoverable volume of timber on this 313,000 acres is 12,520,000,000, but not all of that 12,520,000,000 will be manufactured on the Oregon Electric for the reason that the Weyerhaeuser Timber Company has approximately 3,000,000,000 feet in their ownership, which lies within this boundary previously described, and I personally [fol. 2727] know that these logs are taken to the Weyerhaeuser Timber Company's plant located at Springfield, Oregon, on the Southern Pacific. There are three hundred million feet also in this area that is owned by the M. & M. Woodworking Company, and we are taking that out to the plant at Albany or at times to lines immediately to the north. Subtracting that three billion three hundred million, that leaves nine billion two hundred twenty million.

Then the Cascades Plywood Company owns approximately eight hundred fifty million feet in this working area, and the Cascades Plywood Company's plant is located at Lebanon, Oregon, a point on the Oregon Electric and also served by the Southern Pacific. I have subtracted that eight hundred fifty million leaving about eight billion three hundred fifty million as so shown, to be shown later as competitive timber. It is timber that can go to either the

Southern Pacific or the Oregon Electric, leaving a net volume of timber for freight originating solely on the Oregon Electric of eight billion three hundred seventy million.

Q. Is there any assurance that all of that eight billion three hundred seventy million will be manufactured at mills on the Santiam Branch to go over the Oregon Electric?

A. Oh, no, there is not.

Q. What other influence is there in this picture of where the logs and lumber go?

A. If you will turn to the back of that map showing the highways, you will note a state highway called the South [fol. 2728] Santiam Highway that bisects this area, more or less, in the middle east and west.

Q. Is that the highway through Albany, Lebanon, and on through?

A. And on east to Bend, Oregon, or Redmond, to be exact.

A large portion of the timber in this eight billion three hundred seventy million is in national forest ownership. As is well-known, the national forest lands are put up to competitive bid, and while I am allocating all of this to mills in this area, I am sure that there will be some small sales that will go to so-called gyppo loggers or independent loggers and taken to mills elsewhere so that I have not attempted to get down to that fine point.

Q. And move out by what means of transportation?

A. By logging trucks on the highway.

Q. And the general process that you have described was followed throughout these Pages 6 and 7 to allocate the total to various transportation agencies?

A. That is right.

Q. On Page 7 I notice you show one figure on Line 21 for Klickitat County and vicinity in the State of Washington of one billion eight hundred twenty-one million feet. What was the occasion for showing that Washington figure in connection with the Oregon figures?

A. That is a volume of timber in Klickitat County that is served by the Goldendale Branch of the S. P. and S. [fol. 2729] Railroad. I consider all of that timber tributary to the S. P. and S. Railroad without competition.

Q. Does the S. P. and S. serve any timber territory in the State of Washington, other than Klickitat County and the vicinity, along the north bank of the Columbia?

A. It serves the south boundaries of Clark County and Umatilla County, but there are no lumber operations of any magnitude in those two counties on the south bank so served by the S. P. and S.

Q. Then this one billion eight hundred twenty-one is for all practical purposes the total served by the S. P. and S. in the State of Washington?

A. That is right.

Q. Turn now, will you, please, to your Pages 8 and 9 of this exhibit and tell us what you have done with your data in developing the material on these pages.

A. I have reclassified the timber, as shown in my Exhibit 42, for the State of Oregon in a different way. I have shown the timber by the three carriers, the Spokane, Portland, and Seattle Railway, Southern Pacific, and the Union Pacific, under two heads for each carrier, one heading being non-competitively a tributary to the carrier, and the other competitive. For example, on Page 8, on Line 8, Linn County, I show this eight billion three hundred seventy million that I just discussed as being non-competitively tributary to the S. P. and S. Railroad, but eight hundred fifty million that is [fol. 2730] competitive, that being the Cascades Plywood owned timber.

Then in the same line, going across to Column 4, the Southern Pacific Company, non-competitively, I consider sixteen billion one hundred eighty-seven and eight tenths million non-competively situated for freight origination to the Southern Pacific and this eight hundred fifty million owned by Cascade Plywood competitive.

Q. Just for example, would that sixteen billion one hundred eighty-seven million non-competitive S. P. and S. traffic include the three billion of Weyerhaeuser Timber, which you say is going to move to Springfield?

A. Yes, it would.

Q. And does that explain generally the manner in which you have set up this data in this exhibit?

A. That is right.

Q. Now turn over to your final Page 9 of the exhibit and tell us what you have shown in the last three lines of that page.

A. On Line 22, on Page No. 9, there is a distribution of the timber of the total of the State of Oregon in the competitive and non-competitive categories, showing the S. P. and S. Railway Company has 2.41 per cent of all of the timber in the State of Oregon that they can reach without competition, 15.29 per cent of the total timber in the State of Oregon that is competitive. The Southern Pacific—

Q. (Interrupting) The total which the S. P. and S. [fol. 2731] system can reach competitively and non-competitively?

A. Is seventeen seventy and seventy hundredths per cent of the total of the State of Oregon, being the sum of two and forty-one hundredths per cent that is non-competitive and six fifteen and twenty-nine hundredths per cent that is competitive.

The same is true for the Southern Pacific Company. The Southern Pacific Company, according to my opinion, has sixty-five and sixteen one hundredths per cent of the state's total timber volume as of January 1 of 1954 that is situated non-competitively to Southern Pacific rails. Sixteen and fifty-eight one hundredths per cent is competitively situated on the Southern Pacific Lines or the Southern Pacific can reach both competitive and non-competitively eighty-one and seventy-four one hundredths per cent of the timber in the State of Oregon as of January 1 of '54.

On Column 6, in Columns 6 and 7, of Page 9, I show the same summary for the Union Pacific Railroad. The Union Pacific Railroad, in my opinion, can reach non-competitively ten and forty-three one hundredths per cent of the timber in the State of Oregon and can reach competitively twelve and sixty-one one hundredths per cent or the Union Pacific Railroad can reach competitively and non-competitively twenty-three and four one hundredths per cent of the timber in the State of Oregon.

Q. Coming back to that Southern Pacific figure that you gave, which it can reach non-competitively, by reference to [fol. 2732] the figures in that column on Pages 8 and 9, would you tell us where the major stands of timber are in the State of Oregon, the Southern Pacific reaches non-competitively?

A. It is in the five southwestern counties, composed of Coos, Curry, Jackson, Josephine, and Douglas. In those five counties I show as of January 1, 1954, an estimated volume of recoverable merchantable timber amounting to one hundred thirty-seven billion two hundred twenty and six tenths million.

Q. And that by a process of arithmetic is approximately a half of the state's total of three hundred forty-six billion?

A. No. That is about 40 per cent of the total in the state.

Q. Yes, my arithmetic is way off. Forty per cent of the state total in those southwestern counties?

A. That is right.

OFFERS IN EVIDENCE

Mr. Rockwood: I offer in evidence Exhibits Nos. 42, 43, and 44.

Exam. Dishman: Is there any objection?

Mr. Maguire: I have no objection to the Exhibits 43 and 44. I think probably I would suggest that ruling be reserved on Exhibit 42 until cross-examination is completed.

Exam. Dishman: All right.

Exhibits 43 and 44 are received in evidence, and the ruling will be reserved on Exhibit 42 until after cross-examination.

(Defendant's Exhibits Nos. 43 and 44, Witness Thomas, were received in evidence.)

[fol. 2733] Exam. Dishman: We will take a short recess.

(Short recess.)

Exam. Dishman: The hearing will come to order, gentlemen.

Cross examination.

By Mr. Maguire:

Q. Mr. Thomas, I have a few general questions which I wish to ask of you about the makeup of certain columns on Exhibit No. 42. What is the official name of this Forest Service publication "economic survey", as you call it?

A. It is generally called, Mr. Maguire, a forest survey.

Q. The forest survey?

A. No; just forest survey. Now, it isn't one publication, but it is composed of a great many publications because, as I stated on direct, it started shortly after 1928.

Q. What I am getting at, if you will pardon the interruption—

A. (Interrupting) Yes. Surely.

Q. (Continuing) —is that a great many publications in one year or is it one publication or a limited number over a number of years?

A. They get out summaries. I have to explain it in this way—

Q. (Interrupting) Go ahead.

A. They started out and they are continuing to make their releases of their findings, not in a regular manner, but as they complete them by counties, and the first were released in 1933. Then, as you know, a depletion and perhaps a burn now and then, windthrow and what-have-you, and then through changes of utilization and better knowl- [fol. 2734] edge of rate of growth in the cut-overlands, they revised these publications from time to time so that the data to which I referred is in, oh, I would just estimate, over 50 different releases.

Q. And to whom are these data released and where can they be secured?

A. All of the data that I am referring to in my Exhibit 42, Mr. Maguire, can be obtained from the United States Experiment Station in Portland, Oregon. That is a branch of the United States Forest Service.

Q. I understand that there were some of your own judgment figures substituted for those shown in the Forest Survey, particularly the items relating to net growth. Did I understand correctly?

A. That and, of course, that has a reflection in the remaining volume of timber, Mr. Maguire.

Q. Oh, yes.

A. I do not agree with the Forest Service on some of their findings as to the present merchantable recoverable timber volumes on certain areas.

Q. Are your net growth figures shown on Pages 2 to 5, inclusive, which are the Forest Survey figures, as cor-

rected by your own opinion and experience, would you say the final results shown on this exhibit is greater or less than that shown in the forest survey?

A. My net results of January 1, 1954, is that what you mean?

[fol. 2735] Q. You substituted all the way along the line.

A. May I answer it in this way, Mr. Maguire?

Q. Yes.

A. My results are slightly higher than the Forest Service. I am talking now of the final results showing the amount of available timber left as of January 1, 1954.

Q. Is that a uniform increase throughout the counties here involved or are some of them less and some of them greater?

A. Some are less and some are greater, but not to a large swing.

Q. Which counties shown on Page 3—

A. (Interrupting) On what page, sir?

Q. Page 4, I beg your pardon, your Oregon counties, west counties, where you show the available timber or standing timber, merchantable timber, I should say, as of January 1, 1954, in which counties are your figures less than those shown in the forest survey?

A. My greatest difference of opinion is in Curry County, Jackson County, and Josephine County.

Q. I see.

A. Do you want me to give the reasons?

Q. No, I don't care about that because that is not in territory involved in this case, anyway.

On territory which is either tributary, counties through which the S. P. and S. system runs, the S.P.A.&S. or the Oregon Electric west of the mountains, in any of those [fol. 2736] counties are your net figures under Column 17 less than those shown in the forest survey?

A. No, they are not, Mr. Maguire, particularly in Linn County. I just completed a couple of years ago a cruise of the approximately twenty-five thousand acres on the north fork of the Santiam showing approximately one billion three hundred million, and that was a fore-run forty per cent cruise, very accurate cruise, and my results there

are about twelve to thirteen per cent more than the resource survey shows.

Q. I see.

A. May I say further, that my over-all increase for both states happens to be about the same, both States of Washington and Oregon.

Q. What does this net growth figure mean? Let's just simply take January 1, 1954, for Benton County. That's Line 1 of Column 17. That is 498.1 mile, isn't it?

Mr. Rockwood: That is not net growth.

A. No, that is remaining timber, Mr. Maguire.

By Mr. Maguire:

Q. I beg pardon. I read out of the wrong column.

A. The net growth is 65 million for the four-year period.

Q. For the four-year period?

A. That is right.

Q. How are those figures arrived at?

A. That, again, I have used certain data in the releases [fol. 2737] of the experiment station, particularly as an aid in computing the area that is logged, then to break that down to show the types of timber areas. Some is Douglas fir, predominantly, some is higher elevation, the mountain hemlock—

Q. (Interrupting) Pardon me. You are going to get around to the net growth pretty soon, aren't you?

A. That is what I am telling you.

Q. All right, let's go on.

A. I have to get a breakdown of the area that is logged over, Mr. Maguire—

Q. (Interrupting) Yes.

A. (Continuing) —so that I may see what the original forest composition was and a reasonable expectation of what the new growth will be and be able then to differentiate by sight the class and the degree of stocking in order to arrive at an intelligent estimate of what the rate of growth is.

Q. Does the forest survey or the economic survey, as you have referred to it once or twice here, does that show by counties the net growth?

A. It does.

Q. And you have amended those figures in accordance with your own computations and experience?

A. That is right.

Q. In those columns as well?

A. That is right. Absolutely.

[fol. 2738] Q. Have you done anything with the survey, forest survey, figures insofar as depletion is concerned?

A. No. I think I stated on direct, Mr. Maguire, that I have accepted the reported volumes of timber removed as shown in the release entitled "Log Recoveries."

Q. Your net growth column, however, is not the additional quantity remaining after depletion, is it?

A. I don't think I quite follow you, sir.

Q. I said, your net growth—what do you mean by net?

A. Well, the net growth is a term that we use more or less professionally in this work. You have a total gross growth, but there is a certain mortality in the younger trees, and we are talking about volume of net growth that exists over this period of time—

Q. (Interrupting) Does net growth then mean after deducting unmerchantable trees the additional merchantable trees as of the year or at the end of the period shown or are those potentially merchantable trees?

A. Those will be potentially merchantable sometime in the future, depending on the age class that they are in at the time that I have made this computation.

Q. How big does a tree have to be to be counted in this net growth column?

A. Those trees are usually in three classes, classifications, from a zero D.B.H. up to six inches, and then from [fol. 2739] six inches to twenty and then from twenty to forty.

Q. Yes.

A. Obviously you are getting no volume in zero to six inches and very little from the six to twenty. Our volume, most of our volume, is found in the twenty to forty's.

Q. Then in computing your net growth from any particular ten-year period you include there trees which have reached a twenty to forty diameter presently during that period, would that be correct?

A. I have included the volume in those trees.

Q. Yes, the volume.

A. Yes.

Q. But not of smaller trees?

A. Oh, yes, the volume is in all the trees.

Q. Even those from nothing to six inches?

A. I say that just academically. It is not worth talking about because there isn't any volume appreciably, but you have to have that to start with in order to estimate what you are going to have in probable growth in the next period of time.

Q. I am not hampered by any professional knowledge in this so I am going to ask you another question, and, that is: at the end of ten years you will have unharvested trees which have gotten out of one class or another into a larger class of trees?

A. That is right.

Q. How do you count that? Do you count just simply [fol. 2740] the growth or the increase in the volume of those trees during the ten-year period or how is it?

A. Maybe I can explain it to you a little better in this way, Mr. Maguire. Naturally, I couldn't go back to 1910 because we had so very little information available at that time, and I took 1947 as probably the best date to start from, and I backed the growth down to 1910, using the areas that we know are logged as of 1947 and computing the growth in those previous decades, you see.

Q. Then that would almost require a crystal ball as well as a slide rule, wouldn't it?

A. No, I don't think so.

Q. Do you feel confident in those entries of a tree process?

A. I have just set up a tree farm and we have based a lot of capital investment on it, and it is on information similar to what I have used here. It is a Miami Corporation of Chicago.

Q. In your remarks about the trend in the northwestern Oregon counties, which are the western Oregon counties north of the north line of Lane County—is that right?

A. Yes.

Q. (Continuing) —and those in the southwestern Oregon counties, I'd like you to look at Page 4 of Exhibit 42. Wayne County is in one of the northwest counties, isn't it?

A. No. That is in the south.

Q. Well, north of—I beg your pardon. Linn is what I meant to say.

[fol. 2741] A. Yes, it is a northwest county.

Q. And Lincoln County is one of the northwest counties?

A. Yes.

Q. And so in Tillamook County?

A. Yes.

Q. Let's look at Lincoln County first. In 1920—let's forget 1920. Let's take 1940. Between 1940 and 1950 your depletion in Lincoln County was 3.7 billion per year?

A. No. No; that is a depletion for 10 years, Mr. Maguire.

Q. I should say 372 million per year?

A. Yes.

Q. And in the four-year period, commencing January 1, 1950, it was between four and five hundred, a little bit over four hundred million per year?

A. Approximately four hundred ten.

Q. Yes?

A. Yes.

Q. So that does not show a decrease for that particular northwestern county?

A. No.

Q. Then go down below to Linn County, and when you go back to—you had 675 million dollars depletion, average depletion, per year during the decade, commencing January 1, 1940, didn't you? Isn't that right?

[fol. 2742] Mr. Rockwood: Feet, not dollars.

Mr. Maguire: Did I say dollars? I am sorry. Feet.

Mr. Rockwood: Yes.

A. Six billion seven hundred fifty-six million.

By Mr. Maguire:

Q. Yes?

A. Or at the rate of six hundred, oh, seventy-six million a year.

Q. And for the past four years you are just slightly under that in Linn County, are you not? It is about six hundred twenty-five, six hundred thirty-five million?

A. Yes.

Q. And then for Tillamook County, which is in one of the northwest counties, you had an average per year for the ten years commencing January 1, 1940, of four hundred thirty-three million depletion per year?

A. Yes.

Q. And since January 1, 1950, that's run over six hundred million?

A. Yes.

Q. So those counties have not lost those places as lumber producing or timber producing counties, have they?

A. I think it isn't quite fair to just talk about the 1940 to 1950 decade. I was referring to the 1920 to 1930 decade.

Q. All right, let's look at them. I'd rather use those figures myself.

A. That is what I talked about so I think you should.

Q. Then let's go back to Lincoln County again.

[fol. 2743] A. Yes.

Q. In 1920 to 1930 you had an average annual depletion in Lincoln County of about one hundred sixty million per year?

A. That is right.

Q. And now you have an average depletion or production, as another word for it, of over four hundred million per year?

A. Yes. It has jumped up from one hundred sixty to four hundred.

Q. Yes. And Linn County has jumped up from forty-four million per year in the 1920's—

A. Yes.

Q. (Continuing) —to over six hundred million per year at the present time?

A. That is right.

Q. And Tillamook has jumped from one hundred seventy-seven million per year to over six hundred thousand. I mean, over six hundred million per year, in the past four years?

A. That is right.

Q. So then when you talk about the northwestern counties losing their places in the sun, so to speak, a great deal of that is attributable to the depletions in Clatsop and Columbia Counties, is it not?

A. I think I showed that. That is where the tree depletion was.

Q. That is what upset your balance there?

A. Columbia and Clatsop, Washington County, and Polk also.

Q. With regard to the percentage of the—let's turn to [fol. 2744] Page 9 of Exhibit 42, and the figures shown in Line 23, which is the total per cent noncompetitive and competitive—

A. Yes.

Q. (Continuing) —tributary to each railroad, that is the percentage of the total timber resources of that date, is it not?

A. I don't know whether you mean that literally, Mr. Maguire, by attempting to add those three percentages up and come out with a hundred. For example, that seventeen and seventy one hundredths per cent in Column 3 on Page 9 that I show as both noncompetitive and competitive isn't a double addition, you see. That two point four one is in there.

Q. Is included in where?

A. Is added to the fifteen point twenty-nine.

Q. Yes.

A. You see?

Q. That is kind of an interesting thing. You've got the percentage of timber tributary to the following railroads, and that is the percentage of the state total of 346 billion feet, isn't it?

A. Yes.

Q. Now seventeen point seven per cent of the state's total of three hundred forty-six billion feet is tributary, either in a noncompetitive or a competitive manner, to the S. P. and S., is it not?

A. That is right.

[fol. 2745] Q. And that would be around about, in round figures—how much would that be?

Mr. Rockwood: The sum of the two figures on Line 21. Those are quantities on Line 21.

Mr. Maguire: Yes, that is right. Well, we come out pretty close. My figuring is very good. Sixty-one billion feet is what I got.

By Mr. Maguire:

Q. And the greater part of the very much larger percentage and larger foot of timber tributary to the Southern Pacific is down in the extreme southwestern part of the state? I think you named these five counties down there: Coos, Douglas, Curry, Josephine, and Jackson?

A. Yes. That is the largest volume.

Q. The largest volume?

A. Yes. As I said before the recess, that was about 40 per cent of the total of the state.

Q. Perhaps you could explain what these three figures on Line 23, which add up to around about one hundred twenty per cent—maybe you can straighten me out on them.

A. I think so, Mr. Maguire. Let's go back to Line 21, if you please.

Q. Yes.

A. You will note that eight billion three hundred seventy million is that net figure that I testified was a tributary noncompetitively to the Oregon Electric in my opinion.

[fol. 2746] Q. Yes.

A. And then there was eight hundred fifty million in addition to that that was owned by the Cascade Plywood—

Q. (Interrupting) Oh, I get you. I see where it is. In your competitive you have duplication of your amounts?

A. Yes, sir.

Q. Yes. Sixty-one billion feet of timber.

A. I beg pardon?

Q. Sixty-one billion feet of timber is not a trifling figure.

A. What is that?

Q. That is the seventeen point seven per cent that is tributary either as competitive or noncompetitive to the S. P. and S.?

A. That is a sizeable amount of timber, certainly.

Q. In your computations as to what was tributary and what wasn't I notice that you, for example, in taking this green colored area on Exhibit 44, you said that you hadn't omitted that on the north because certain timber was cut by certain other—wait a minute—by a certain logging company which would ship it down along Crabtree Creek and go to mills which were not on the S. P. and S.?

A. That is right.

Q. I believe that is the reason you excluded that.

On the northeast side you said the M. & M. Woodworking Company had timber there?

A. Yes.

[fol. 2747] Q. And at the south there was timber which was moved along the McKenzie River to certain mills there?

A. Yes.

Q. So they were excluded from the S. P. and S.?

A. Yes.

Q. Do you think that mills on the S. P. and S. will in the future be dependent entirely for their supply of logs on logs which are cut in areas immediately tributary to the S. P. and S.?

A. I think that the mills presently located on the Oregon Electric Branch running east from Albany that are in this area that I show on that Exhibit 43—is it, sir?

Q. Exhibit 44.

A. Thank you.

(Continuing) —or mills that will be built in that area must and will have to depend on the timber within that line as shown on my exhibit.

Q. Let's take the S. P. and S. or the Oregon Electric—that is what we are talking about down here in the Willamette Valley, primarily?

A. Yes.

Q. It is a fact, is it not right now, that mills, regardless of whether they are on the S. P. and S. or on the Southern Pacific, are having logs hauled by truck from considerable distances of the railroad, aren't they?

A. To what mills are you referring?

[fol. 2748] Q. I am talking about the mills I mentioned.

A. Mills in this area?

Q. Not in this green area, no. I said along the Oregon

Electric and the Southern Pacific, generally in the Valley there.

A. Oh, down at the points like Junction City and places like that where mills are served jointly by the S. P. and S. and Oregon Electric that is true.

Q. And also that is true—

A. (Interrupting) I feel that logs from this area may go down to mills.

Q. And it is also true of mills, regardless of whether they are jointly served by the Oregon Electric and the Southern Pacific to mills generally in the Willamette Valley, many of them are trucking logs for substantial distances from the woods to their mills, are they not?

A. Yes. I have taken it into consideration.

Q. How did you take it in consideration in arriving at this eighty-three hundred and—wait, now, let me look here. Yes, you show some eighty-three hundred sixty or eight billion three hundred sixty million competitive in Lane County between the S. P. and S. and the Southern Pacific?

A. That is right.

Q. You also show in Lane County forty-seven billion feet non-competitive to the Southern Pacific?

A. Yes.

[fol. 2749] Q. Is it impossible that any of that forty-seven billion feet could be cut, carried by truck over to a mill which is operating on the S. P. and S. or on joint traffic?

A. There will be very little of it, Mr. Maguire.

Now, take that example you just brought out in Lane County. I have taken each area and considered it very carefully. For example, first is the S. P. Branch running down to Coos Bay. The Long-Bell Lumber Company has its large mill located at Vaughn, a point probably 18 or 20 miles west of Eugene. The Long-Bell Lumber Company bought the Sius Law Timber Company, Porter Brothers' Timber Company, and three or four smaller companies, so they presently own most all of the timber in that area, and their mill is located on the Southern Pacific so, in my opinion, I consider that timber tributary to the Southern Pacific Branch.

Q. Do you have your work papers available?

A. No, I have not.
Q. Where are they?
A. In Portland, Oregon.
Q. Do you have the forest surveys' figures with you?
A. Oh, no.
Q. Then what we have to rely upon here is your statement of your best judgment of who owns timber where in the entire State of Oregon and who is going to sell it to whom for cutting into lumber. We have to rely upon your statement that that is your best judgment so far as any figures you have available?
[fol. 2750] A. That is right.

Mr. Maguire: That is all. Thank you, Mr. Thomas.

Redirect examination.

By Mr. Rockwood:

Q. Mr. Thomas, Mr. Maguire asked you with respect to Tillamook County and Lincoln County. Let's take first Lincoln County, which he mentioned first. What railroad serves Lincoln County? And first point out on the map where it is so the Examiner can identify it. Where is Lincoln County?
A. I will have to have a map, Mr. Rockwood.
It is on the coast, about, oh, yes, it is just west of that green patch on the map, Mr. Examiner. I think that is a good way to locate it.

Exam. Dishman: Just west of Corvallis?
The Witness: That is right.

By Mr. Rockwood:

Q. What railroad serves Lincoln County?
A. The Southern Pacific.
Q. What line of the Southern Pacific gets over there?
A. The Yaquina Branch.
Q. How do you spell that, do you remember?
A. Y-a-q-u-i-n-a.
Q. Where does the Yaquina Branch of the Southern Pacific leave the line of the Southern Pacific in the valley?

A. It leaves the West Side Branch of the Southern Pacific at Corvallis.

Q. What railroad reaches into Tillamook County?

A. The Southern Pacific.

[fol. 2751] Q. What line of the Southern Pacific reaches into Tillamook County?

A. I beg pardon?

Q. What line of the Southern Pacific reaches into Tillamook County?

A. That is known as the Tillamook Branch.

Q. Where does it depart from the line of the Southern Pacific in the Valley?

A. From Hillsboro, Oregon, on the West Side Branch of the S. P.

Q. Which is not far south of Portland?

A. It is due west about 16 miles.

Q. What is the topography between Hillsboro and the coast?

A. Well, it crosses the coast range.

Q. Does any line of the S. P. and S. touch Tillamook County, so far as you know?

A. No.

Q. Linn County, of course, you have shown here on this map as being the location of the Santiam Branch of the Oregon Electric. Where is Lane County on this map? Just identify it with respect to your green patch.

A. Well, it is immediately south of the green patch, Mr. Examiner. In fact, the south boundary of the green patch is the north boundary of Lane County.

Q. And with respect to the Cascade Range and the Pacific Ocean what is the extent east- and westbound of Lane County?

[fol. 2752] A. Lane County extends easterly and westerly from the Cascades to the Pacific Ocean.

Q. Is there any line of the Southern Pacific in Lane County other than the Main Line, which runs through Eugene towards California?

A. Yes. The old Main Line runs more or less due south from Eugene. The new Main Line, what we call the Natron Cutoff, runs southerly from Eugene, and then in addition to that is the Coos Bay Branch of the Southern Pacific

extending from Eugene westerly down the Siuslaw River to practically the coast and then southerly to Myrtle Bay.

Q. In your experience what is the present practice, if you can give it to us, with respect to the maximum length of truck haul now being used in trucking logs from the woods to the mills? How far is the maximum haul?

A. You are referring to the Douglas fir region on the west side of Oregon?

Q. Yes.

A. The maximum distances, I think I would consider it to be bracketed as being between 40 and 60 miles.

Q. Do you know what the extent of Lane County, can you tell us the approximate distance that the south line, the most southerly line of Lane County is from the most northerly line of Lane County, about how far? Do you know?

A. Sixty miles.

[fol. 2753] Q. And you are gauging that by townships as designated on this map?

A. Yes. That is in a straight line.

Q. Are there extensive milling operations along the Southern Pacific south of Eugene?

A. Yes, there are.

Q. Do you know where the timber from the area south of Eugene is now moving, where the logs are now moving?

A. Well, most all of the logs that are moving that are being delivered to the mills are being delivered to mills located on the Southern Pacific Railroad.

Q. At what points?

A. Well, one large operation, if you wish me to call names—

Q. (Interrupting) Go ahead.

A. (Continuing) —is the Pope and Talbot operation at Oak Ridge. That is on the Natron Cutoff. They draw logs from the National Forest Service and some privately owned land.

Then the next large mill is the Edward Lyons Lumber Company's plant located at Westfir, a point about eight miles towards Eugene on the Natron Branch.

Q. That is eight miles—

A. (Interrupting) Well, that would be northerly and somewhat westerly from Oak Ridge.

Q. The station of Oak Ridge is located on this map in Lane County on the line that you refer to as shown there. [fol. 2754] Go ahead. Where are the other substantial operations?

A. I will skip a number of small mills that I am familiar with between Westfir and Springfield. There are probably eight or ten small mills cutting from fifteen to twenty-five thousand feet a day, all located on the railroad. And the next large plant is—

Mr. Maguire (interrupting): Where is Springfield?

The Witness: Springfield is just east of Eugene, Mr. Maguire, just across the Willamette River.

Mr. Maguire: Oh, yes. I see. Thank you.

A. At Springfield the largest operation is the Weyerhaeuser Timber Company's plant. The mill itself is about six miles easterly from Eugene.

Then the Ross Burrough—

By Mr. Rockwood:

Q. What timber?

A. Ross Burrough Lumber Company has a large mill cutting in the neighborhood of fifty to sixty million feet a year.

Q. Where does it get its timber?

A. They get most of their timber up the McKenzie River, and it is trucked down the McKenzie to their mill. I cruised that timber and set up the operation.

The next mill, the Booth-Kelly Lumber Company, also at Springfield.

Q. Where does Booth-Kelly get their logs?

A. They are getting their logs practically 100 per cent [fol. 2755] from their privately owned land, transported by trucks to their mill.

Q. Where are their lands located in general?

A. Oh, east of Eugene and north and south.

Q. In Lane County?

A. In Lane County.

Q. In a large measure?

A. All in Lane County.

Q. And there are other mills at Springfield, are there?

A. There are some smaller mills I can't name.

Q. There are mills right in the City of Eugene served by the Oregon Electric and Southern Pacific?

A. Yes, there are several there.

Q. And some of them draw their logs from Lane County, do they?

A. I believe practically 100 per cent of their logs come from Lane County.

Q. And in your Exhibit No. 42 you show a certain quantity of timber from Lane County, which is competitive with the Southern Pacific, to wit, eight billion three hundred sixty million, is that correct?

A. Yes, eight billion three hundred sixty million.

Q. Is that computed in the light of the fact that certain Eugene mills served by the Oregon Electric draw their timber from Lane County?

A. It is.

Q. Did you wish to make a correction in a governmental [fol. 2756] agency that you referred to on your direct examination?

A. I must thank this gentleman over here—I didn't get your name—but I inadvertently said O.P.A. in relative relation to the Tillamook fire, and it should have been N.R.A.

Mr. Rockwood: I have nothing further.

Mr. Maguire: I have a couple further questions.

Exam. Dishman: Do you have any objection to the receipt of this exhibit?

Mr. Maguire: I want to pursue this just a little bit further, Mr. Examiner.

Exam. Dishman: All right.

Recross examination.

By Mr. Maguire:

Q. As to Lane County, which was the last thing Mr. Rockwood asked you about, you showed this eight billion three hundred sixty million feet competitive between the Oregon Electric and the Southern Pacific, based upon the annual

requirements of mills located upon the Oregon Electric and the Southern Pacific?

A. And the Southern Pacific, yes, sir.

Q. And are there any mills which are located in Lane County only upon the Oregon Electric?

A. I can't answer that question. They are so close together that I think they are jointly served.

Q. Do you know whether there are any which are not served jointly?

A. No, I can't answer that question.

[fol. 2757] Q. If there were any, if they were served exclusively by the Oregon Electric, then that would go under Oregon Electric non-competitive business, according to your scheme of things?

A. If there were such mills.

Q. You don't know whether there are or not?

A. I can't swear that there are or are not.

Q. And the work sheets from which you finally reached these conclusions are not available for examination?

A. No.

Mr. Maguire: That is all I have.

I now object to Exhibit No. 42, Mr. Examiner, because it is not shown that it is based upon any—that it is based upon modified governmental sources, which were modified according to the witness's own opinion. He does not have work sheets here for cross-examination or for examination for the purpose of cross-examination. We are forced to take upon his own say-so that it was upon his best judgment that these figures are based. I realize that the objection may run rather to the weight than to the admissibility, but I think that the lack of weight is so marked there because we do not have any figures to go back upon, no governmental sources, nothing except work sheets which are about 2,000 miles away from us which are not available for examination. I do not believe the exhibit has enough weight even to permit it to be received.

Mr. Rockwood: This witness is called an expert, and he has expressed his opinion, and he has expressed his opinion [fol. 2758] in terms of a long exhibit. He is shown to have been qualified as an expert, and his opinion is relevant and material, and his evidence is competent.

Now, I am not going to argue now with Mr. Maguire as to the extent of the weight of this exhibit, but, certainly, the fact that work sheets are not here in the City of St. Paul does not go to the admissibility of this exhibit.

Incidentally, in connection with one of Mr. Maguire's own exhibits after it came in, there was no objection on that ground. I asked him for the work sheets and asked him to send me the work sheets, and they were not furnished. That goes to Mr. Nickel's Exhibit No. 1.

Mr. Maguire: The reason they were not given was that information was equally available and was drawn directly off of source papers which were equally available to the S. P. and S. and ourselves.

Mr. Rockwood: That was not the reason given for the failure to produce the work sheets.

Exam. Dishman: That exhibit is already in evidence.

Mr. Maguire: I don't think we need to go back on that.

But the mere fact that a man testifies as to experience which would tend to qualify him for an expert, if he has the basis or can give the basis for his decisions is one thing, but a mere dogmatic say-so that, that is my opinion, is without the basic figures to make it up, certainly, I don't think [fol. 2759] renders the exhibit worthy of being received.

Mr. Rockwood: The witness is available for cross-examination to any extent that Mr. Maguire wants to examine.

Mr. Maguire: How can I cross-examine when I don't have the man's work sheet here?

Exam. Dishman: The exhibit will be received for whatever weight the Commission may want to give it.

(Defendant's Exhibit No. 42, Witness Thomas, was received in evidence.)

Exam. Dishman: Is that all of this witness?

Mr. Rockwood: That is all.

Exam. Dishman: The witness is excused.

(Witness excused.)

Mr. Rockwood: I have another witness available, and I don't believe I can finish his direct examination this afternoon but I am quite willing to start.

Exam. Dishman: Whatever you want to do. Do you want to start?

Mr. Rockwood: Oh, yes. Let's make progress.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

Mr. Rockwood: Mr. Albertson will discuss one exhibit which I would like to have marked for identification.

Exam. Dishman: Identify it as Exhibit No. 45.

[fol. 2760] (Defendant's Exhibit No. 45, Witness Albertson, was marked for identification.)

L. W. ALBERTSON was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. You have been sworn, Mr. Albertson?

A. Yes, I have.

Q. Will you please state your name, address, and occupation?

A. My name is L. W. Albertson, A-l-b-e-r-t-s-o-n, Portland, Oregon. I am comptroller of the S. P. and S. Railway. Also I am comptroller of its operating subsidiaries, the Oregon Electric Railway Company, the Oregon Trunk Railway and its non-operating subsidiary, Ruth Realty Company.

Q. How long have you been employed by these companies, and in referring to them, I am going to talk of them as the S. P. and S. system, and in general in what capacities?

A. I have been employed by the S. P. and S. since May, 1915, the first 12 years in various clerical capacities in the operating department. Since 1927 I have been in the accounting department.

Q. Since nineteen what?

A. 1927.

Q. All right. How long have you been comptroller?

A. I have been comptroller since July, 1948.

Q. In general what are your duties as comptroller, Mr. Albertson?

A. Well, as comptroller I am immediately in charge of [fol. 2761] all of the work of the accounting department and its various divisions.

Q. Under what system of accounts are the accounts of the S. P. and S. kept?

A. The accounts are kept in accordance with the Uniform System of Accounts of the railroad companies as prescribed by the Interstate Commerce Commission.

Q. There is a compilation which has been marked for identification as Exhibit No. 45. Did you prepare this Exhibit No. 45?

A. Yes.

Q. Will you please tell us of the extent of the ownership by the S. P. and S. Railway Company of the capital securities of the three companies, the Oregon Electric, Oregon Trunk, and Ruth Realty Company, which you referred to as subsidiaries?

A. The S. P. and S. Railway Company owns all of the outstanding stock of the Oregon Electric Railway Company, the Oregon Trunk Railway and the Ruth Realty Company. Prior to March 31, 1953, there were uncancelled certain bonds of the Oregon Electric Railway Company which were owned entirely by the S. P. and S. As of that date those bonds were cancelled. Neither of the other subsidiaries ever had any outstanding bonds.

Q. How are the capital securities of the Spokane, Portland and Seattle Railway Company itself held?

A. Well, the capital stock of the par value of $40,000,000 issued in 1910 and 1911 is owned exactly equally by the Great Northern and the Northern Pacific. The bonds of [fol. 2762] the S. P. and S. are four per cent bonds due in 1961, of a face value of $73,710,000. The bonds are also owned equally by the two companies.

Q. Has the S. P. and S. ever paid any dividends on the capital stock so owned by the parent companies?

A. No.

Q. Now turn to your Exhibit 45 and begin with page one and tell us what you have shown there.

A. Well, the first page, page one, shows the investment in road and equipment for the three operating companies of the system as of December 31, 1954, in accordance with the books of the companies. In the second table on the page I have shown the figures derived from valuations of the property as made by the Interstate Commerce Commission.

I will illustrate here by explaining the valuation figures for the S. P. and S. itself which total $112,926,634.94, line one on the second tabulation.

Q. In the final column (d)?

A. That is right, the valuation of the S. P. and S. as of June 30, 1916. The figure which I last stated is the valuation as determined by the Commission brought down to date in accordance with valuation order No. 3 of the Commission.

The Oregon Trunk Railway figures were developed in the same way. The Commission made no valuation of the property of the Oregon Electric Company and consequently I have shown for that company the book figure [fol. 2763] of $12,253,080.86.

For the system as a whole, then, subject to the explanation I have given of the Oregon Electric figure the Commission valuations brought down to December 31, 1954, one forty-one five forty-five nine twenty thirty-three.

Q. Now, so the reporter will get the figure, that is $141,545,920.33?

A. That is right, which is two million three seventy-five four fourteen thirty-four in excess of the book figure.

Q. Now turn to page 2; will you, please, and tell us what you have there.

A. Page 2 shows first the gross capital expenditures from the beginning down to December 31, 1954. The figure shown in line 5 exceeds, of course, the figure shown on page 1 for investment in road and equipment because this figure is a gross figure and does not show the effect of any retirements.

Q. That is, the figure on page 2 is a gross figure?

A. Yes.

In the second table I show the source of the funds so disbursed for capital purposes: first, the cash contribution

made by each of the parent companies, which I show to be equal; the second, borrowed money, representing, oh, equipment trust certificates and other equipment obligations; and, finally, the cash spent by the S. P. and S. from funds derived from its own operations.

Mr. Maguire: Could I ask a question here for clarification?

Mr. Rockwood: Yes.

[fol. 2764] Mr. Maguire: Does this include the original construction cost?

The Witness: Yes.

By Mr. Rockwood:

Q. Turn to the third page and tell us what you have shown there.

A. Well, the third page shows the source of the money which the S. P. and S. used for purposes including, among others, the capital expenditures made by it, as I have shown on page two, and on this page I show the net railway operating income of the system—

Q. Net railway operating?

A. Net railway operating income of the system lines consolidated in each year from the beginning, June 30, 1911, to and through the calendar year 1954.

I want to point out that the figures for net railway operating income are, of course, before deduction for any interest accrued on the outstanding bonds. The interest accrued on the outstanding bonds in each of the years was as shown in Column (d), Page 4. The interest accrued on the outstanding bonds in each of the years was $2,948,400 and in no year prior to 1941 was a net—

Mr. Maguire (interrupting): I'm sorry, the witness has me lost here in his explanation.

What page are you talking about?

Mr. Rockwood: Well, page three. He says his net railway operating income was before deductions for interest and then he stated the amount of interest which accrued in each [fol. 2765] year of $2,948,400.

Mr. Maguire: Oh, I see.

By Mr. Rockwood:

Q. Proceed, Mr. Albertson.

A. The exhibit shows that in no year prior to 1941 was the net railway operating income as much as the annual accrual of interest. The fact is, then, that in every year up to 1941 the net income figure of the S. P. and S. system was a red figure.

There is one qualification I should make to that statement.

Mr. Maguire: Just for clarification, you mean after deducting the interest on your obligations?

The Witness: That is right.

By Mr. Rockwood:

Q. When you use the word net income, is that a technical term, net income as defined by the accounting classifications?

A. That is right.

Mr. Maguire: I see. I just didn't know what his net income was. He didn't say and the exhibit doesn't show it on its face.

Mr. Rockwood: That is right.

Mr. Maguire: So I didn't follow him.

A. (Continuing) In the year ending June 30, 1911, the total interest accruals were only eight thirteen—

Q. Read these in dollars, Mr. Albertson, $813,333.33.

A. O.K.

Mr. Maguire: These figures in interest are shown on page four of the exhibit so we will know when we read the record here?

[fol. 2766] Mr. Rockwood: Yes, as a matter of fact they are shown on page four. He is coming to that in a moment.

A. (Continuing) —because of the times the bonds were issued, and in that year the net railway operating income did exceed the interest accrued.

On page three in Column (c) or the second column shows the other income of the S. P. and S. in the period which in most years was largely from rents. There are three large items in that column, years 1918, '19, and 1920, and those

figures include payments by the United States for use of the property during federal control.

Further down in that same column there is another large item, the year 1944, and that figure represents an income adjustment resulting from amounts deducted from freight revenue in prior years and was settled in that year under a Section 22 Quotation 265.

By Mr. Rockwood:

Q. That was government traffic?

A. Government traffic, that is right, in 1942 and '43.

Q. What is the occasion for what appeared to be rather substantial increases in the other figures following the years 1937?

A. Following 1937 the rather substantial increases there are due entirely to rent from a grain elevator that was constructed.

Exam. Dishman: You mean the year 1942?

Mr. Rockwood: 1944. He explained that governmental adjustment income for prior years, something over a million and a half.

[fol. 2767] A. From 1946 through 1954 this other income figure is substantially more than it is in the prior period, and it is during that period that the rent from the elevator at Vancouver accounted for that increase.

Miscellaneous deductions in Column (d), the third column, cover a multitude of items and they are relatively constant for the entire period.

By Mr. Rockwood:

Q. What is the fourth column?

A. The fourth column is the result of cross adding and deducting in those columns, and it is the addition of the net railway operating income in Column (b), the other income in Column (c) deducting the figure in Column (d), and would represent the cash which the S. P. and S. system had available for the payment of interest for capital expenditures and for other obligations.

Mr. Maguire: Could I ask a question there, just another one of my clarifying questions?

Mr. Rockwood: Yes.

Mr. Maguire: Is this income shown in Column (e) the income upon which you calculate your rate of return?

Mr. Rockwood: Column (b)?

Mr. Maguire: Column (e).

Mr. Rockwood: No.

The Witness: Column (e) is before fixed charges.

Mr. Maguire: Yes, I know.

Mr. Rockwood: It includes other income, non-operating income, such as rents and many things other than those [fol. 2768] which would be included in the computation of a net railway rate of return. Net operating income is what is customarily used in determining the rate of return.

Mr. Maguire: Well, we will argue about that later.

A. The statement shows, then, in the entire period from 1911 through 1954 the S. P. and S. system had available for the payment of interest, for capital expenditures, and other obligations the sum of $112,678,672.26. Of this amount I have shown on page two that $82,467,157.98 was used for capital expenditures.

By Mr. Rockwood:

Q. Will you tell us what you show on pages four and five?

A. On pages four and five is the analysis of the interest accrued on the first mortgage bonds from 1911 through 1954, those bonds all being held by the parent companies.

As shown on this statement the S. P. and S. was in default in the payment of interest from the very beginning and never was paid up currently.

The item of $813,333.33 accrued in the year ending June 30, 1911, was not paid when it became due. In the next two years, the year ending June 30, 1912 and June 30, 1913, the item shown as interest paid was not wholly in cash, but it was partly in bonds and notes. Some additional notes were issued in succeeding years, the last of the notes being issued in the year ending with June 30, 1915. All of the interest paid as shown in Column (e) subsequent to that June 30 item was paid in cash.

[fol. 2769] Q. June 30 of what year?

A. 1915.

Q. Let me get that straight. All interest paid items in Column (e) subsequent to the June 30, 1915, figure were paid in cash?

A. Were paid in cash.

Q. All right.

A. (Continuing) And all of the notes given for the interest payments in the earlier years have since been paid in cash.

Q. Now turn to page six, will you, please, and tell us what you have there.

A. Well, on page six is the continuation of the story with respect to interest, and it shows the total interest accrued on the outstanding bonds of $122,578,800.00, which sum was due equally to the Northern Pacific Railway Company and the Great Northern Railway.

The statement in line four and five shows the interest paid. The aggregate amount is shown on line six as being $43,113,161.92 which was paid exactly equally to the Northern Pacific Railway Company and the Great Northern Railway Company. That statement further shows that as of December 31, 1952, the interest unpaid was $79,465,638.08.

I have shown that unpaid interest figure on my next page, on page seven, and, as I have said before, the interest on these bonds was continually in default. However, the aggregate of the payments made and credits received in years [fol. 2770] before and after 1926 had wiped out all of the interest in default for periods prior to 1926, and left a balance of $2,807,238.08 of interest for the year 1926 as accrued and unpaid. That is the figure on the first line on page 7 in Column (d).

Mr. Maguire: Pardon me, what was that last statement?

(Statement read.)

Mr. Maguire: I wonder if we can't get this clear, this page seven says that interest for 1926 was forgiven and the witness has just said there is that balance outstanding.

Mr. Rockwood: Not today. That was the balance in 1926.

The Witness: In 1926 it was unpaid, the amount of 1926 interest that was unpaid.

Exam. Dishman: The interest was forgiven prior to 1926, is that right?

The Witness: No.

Mr. Rockwood: The testimony—he will testify as to when that forgiveness will take place.

Mr. Maguire: Just simply to get my thoughts clear on this, you call attention to the year 1926 because that is a different figure, a slightly lower figure than for the prior years?

The Witness: That is right. The payment through the years to December 31, 1952, were sufficient to extinguish the bond interest from beginning through 1925 and in part the interest due for 1926.

Mr. Maguire: It wiped out everything before 1926 and [fol. 2771] even wiped out a portion of 1926?

The Witness: That is right.

By Mr. Rockwood:

Q. All right, go on with your 1927 figures and thereon on page 7.

A. For the year 1927 and all subsequent years up to and including 1952, the interest accrued on the bonds at the rate of $2,948,400 a year, one half of which was due each of the parent companies.

Exam. Dishman: Each of the parent companies?

The Witness: Each, yes.

A. (Continuing) At the end of 1952 the total interest accrued and unpaid is as shown in Column (d) of page seven. That figure is $79,465,638.08.

As of December 31, 1952, we were told by the parent lines that they would forgive that interest. Pursuant to this advice we cancelled in our accounts the liabilities then shown for accrued and unpaid interest totaling that figure of $79,465,638.08.

Exam. Dishman: That was through the year 1952?

The Witness: Through 1952.

Exam. Dishman: What's happened since then?

Mr. Rockwood: We will come to that in a moment, Your Honor.

A. (Continuing) The figure is $79,465,638.08.

Now, at the same time the subsidiary companies of the S. P. and S., that is, the Oregon Trunk and the Oregon Electric, had unpaid obligations owing to the S. P. and S. [fol. 2772] including, among other things, the Oregon Electric bonds then held by the S. P. and S. With the approval of the parent companies the S. P. and S. cancelled those obligations of the subsidiaries of the S. P. and S. which was done as of March 31, 1953.

By Mr. Rockwood:

Q. Let me ask you right here, in response to what the Examiner asked, that bond interest accrued and unpaid, which was forgiven as of December 31, 1952, was $79,465,638.08. Now, since December 31, 1952, additional interest has accrued. What has been done by the S. P. and S. with respect to interest which matured and became payable on the bonds subsequent to December 31, 1952?

A. That interest has been paid.

Q. It has been paid currently?

A. That is right.

Q. As each semi-annual coupon matured that interest was paid?

A. That is right.

Q. Is there any present default on the interest of those outstanding bonds?

A. No, there is not.

Mr. Maguire: Could I ask, then, in connection with that, Mr. Rockwood, if you look at page five, there is accrued cumulative interest shown in 1954 of $982,800 which has since been paid, is that it?

The Witness: On page five there are two figures, two items, in there that have been paid, that is, the $1,965,600 [fol. 2773] shown for 1953 in Column (e) and the $2,948,400.

Mr. Maguire: Yes, but you show a balance, an accrued and unpaid interest balance, in 1954 under Column (g) of $982,800. Has that been paid?

The Witness: It has since become due and has been paid. These bonds are due on March 1 and September 1, the interest is payable on March 1 and September 1.

Mr. Maguire: This was in default from 1953 according to your statement?

The Witness: Not in default because the $982,800 shown as accrued interest is not due until March 1st. Do you get what I mean, the interest is payable on March 1 and September 1, so as of December 31 in any year there is four months interest accrued but not due.

Mr. Maguire: Instead of getting clarified I am getting befuddled. I think I will save that for cross.

By Mr. Rockwood:

Q. You paid your interest on September 31, 1954?

A. We paid the interest September 1.

Q. September 1, 1954?

A. That is right.

Q. A full six months' interest?

A. That is right.

Q. On December 31, 1954, was there any accrued interest unpaid?

A. Yes.

[fol. 2774] Q. For what period?

A. Four months.

Q. September, October, November, and December, '54?

A. That is right.

Q. Was that interest yet payable under the terms of the bonds?

A. No, not payable until March 1.

Q. March 1, 1955?

A. Yes.

Q. Was that interest which accrued for the last four months of '54 and the first two months of '55 paid on March 1, 1955?

A. Yes, it was paid.

Mr. Maguire: Let me just get one final figure here and then I will stop interrupting.

Mr. Rockwood: Yes.

Mr. Maguire: Then on page five where it shows accrued cumulative interest of $982,800 which seems to hang over from 1953, only half—no, slightly over half the interest was paid, about two-thirds of the interest was paid in 1953, but that sum is now paid up, regardless of when or how it was paid?

The Witness: That is right.

Mr. Maguire: We are all square now?

The Witness: That is right.

Mr. Maguire: All right.

The Witness: We will have that same figure holding over every year.

[fol. 2775] By Mr. Rockwood:

Q. At the end of each calendar year there will always be four months interest accrued and unpaid, being interest from September 1 to the end of the year which has not become due until March 1 of the succeeding year, is that correct?

A. That is right.

Mr. Maguire: I don't like to belabor this thing but I still think we are mixed up on this.

Mr. Rockwood: We?

Mr. Maguire: Using the editorial "we".

But you show in 1954 there was $2,948,400 interest due and $2,948,400 interest paid.

Mr. Rockwood: That is right. May I explain it—

Mr. Maguire (interrupting): You have the same figure for 1952.

Mr. Rockwood: Wait a minute.

Mr. Maguire: But in 1953 you have the same amount due but only $1,965,600 interest paid.

Mr. Rockwood: Because interest was forgiven up to 1953 or '52, so four months of interest which would otherwise have been shown was forgiven at that time as of December 31, '52. The forgiveness included an extra four months.

The Witness: Interest accrued but not due.

Mr. Rockwood: Not payable.

Mr. Maguire: Thank you for the clarification, Mr. Rockwood.

By Mr. Rockwood:

Q. In addition to these direct contributions of cash by [fol. 2776] the parent lines for capital purposes which you have described and the treatment of bond interest, as you have described it, have the parent lines assisted the S. P. and S. in any other way in meeting its obligations?

A. Yes, the parent lines have advanced from time to time cash to the S. P. and S.; and I have shown on page eight of this exhibit the cash advances made from the year 1913 and through the year 1942, advances in the total sum of $13,708,310.20, and I have indicated on that statement in Column (c) the purpose for which those advances were made. They were made for various purposes, and I will mention one that Mr. Budd and Mr. Hart testified on, and that was with respect to construction of the steamships for the Great Northern Steamship Company. That should be Great Northern-Pacific Steamship Company. The Great Northern Steamship Company was a wholly owned subsidiary of the S. P. and S. The advances by the parent lines for the purpose of steamship construction, you will notice, in 1914 was $2,242,421.11, and in 1915 was $1,673,701.49, and in 1916 was $150,000.00, the total of those advances for steamship purposes being $4,054,999.85.

Q. Wait a minute. You gave two million two forty-two in 1914.

A. That is wrong. It is $2,231,298.36 for construction purposes.

Q. And substituting that figure of $2,231,298.36 for the first figure you gave, is that figure correct of $4,054,999.85?

A. $4,054,999.85.

[fol. 2777] Q. Has the S. P. and S. made any repayments on account of those advances?

A. Yes. I have shown on page nine the schedule of the repayments, and Column (c) on that schedule shows that the advances have been repaid in full.

Q. Turn back to page eight and in some years following the year 1930 you show as the purpose of the advance

taxes. There are several years where that occurs in the 30's. Will you tell us what was the reason for those advances in particular?

A. Well, the advances that are indicated there for taxes were to enable the S. P. and S. to make its tax payments when they became due, and in that period the S. P. and S. found itself at times without current funds with which to pay those taxes, and the money was advanced by the Northern Pacific and the Great Northern in order that those taxes would not be in default.

Q. Let me just call attention to this, page eight in the year 1938 shows advances for taxes of $550,000. Now, on page nine, repayments in the year 1938, you show two payments, you show payments of $275,000 to each of the two parent companies or a total of $550,000. Explain, will you, please, the significance of the similarity of those two figures.

Mr. Maguire: No, those aren't repayments.

Mr. Rockwood: Repayment, yes.

Mr. Maguire: Repayment is $550,000 but the two sums you read of $275,000 are not repayments but are advances [fol. 2778] made by—that is what it says here.

By Mr. Rockwood:

Q. If I am wrong, my interpretation of these, set me straight, will you, please?

A. Well, in using the year 1938 as an example, the statement does indicate that each of the parent lines advanced to the S. P. and S. $275,000 and further on in the statement in Column (e) it shows that in that same year the S. P. and S. repaid $550,000, which was the exact sum advanced.

Q. How much of that $550,000 which you paid was paid to each of the parent companies?

A. Paid in exactly equal amounts.

Q. What was the occasion for the advance in that year of $550,000 and the repayment in that year of $550,000, what is the significance?

A. I think, as I mentioned awhile ago, that often or in that period there were times when the taxes became due

and the S. P. and S. would be short of funds for one reason or another and in order to avoid a penalty in the payment of these taxes the money was advanced by the parent lines. Then as our situation improved and then later on in the year we got the money in the treasury with which we could repay this temporary advance, it was repaid, and it happened in this year, 1938, the exact amount advanced in that year was the sum that was repaid.

1938 isn't the only year in which we got money from the parent lines and repaid money. We did that on several [fol. 2779] occasions. It just illustrates that when we got short of money, why, we went to the N.P. and G.N. and borrowed the money temporarily. It was loaned to us, and when we got to where we could repay it, we paid it back.

OFFER IN EVIDENCE

Mr. Rockwood: I offer Exhibit No. 45 in evidence.

Exam. Dishman: The ruling will be reserved until after cross-examination.

We will recess until 9:30 tomorrow morning.

(Whereupon, at 5:10 p.m., an adjournment was taken until 9:30 a.m., Thursday, April 7, 1955.)

[fol. 2782]

Transcript of Proceedings—April 7, 1955

Exam. Dishman: The hearing will come to order, gentlemen.

Has the witness been tendered for cross-examination?

Mr. Rockwood: Yes, Mr. Albertson is ready to be tendered for cross-examination.

Mr. Hillman: Jordan J. Hillman, appearing for the Chicago and Northwestern Railway Company and the Chicago, St. Paul, and Minneapolis and Omaha Railway Company, 400 West Madison Street, Chicago.

Exam. Dishman: This is the first appearance?

Mr. Hillman: No, sir. We were in Chicago and at Portland.

Mr. Maguire: Had you finished your direct?

Mr. Rockwood: Yes. You may cross-examine.

Cross examination.

By Mr. Maguire:

Q. Mr. Albertson, will you turn to Page 2 of your Exhibit 45. On lines 6 and 7 of Page 2 you characterize these two figures opposite the names Northern Pacific and Great Northern, each amounting to something over thirty-eight million dollars, as a cash contribution. Did either of these two companies who have owned each fifty per cent of the capital stock of the S. P. and S. from its organization, from its inception, did either of them pay anything into the treasury of the S. P. and S. for the stock which was issued?

A. The thirty-eight million dollars plus on lines 6 and 7 represent sums that were advanced toward the construction of the line.

[fol. 2783] Q. You didn't answer my question.

Mr. Maguire: Would you read the question, please?

Mr. Rockwood: He is about to answer, if you will wait a minute.

Mr. Maguire: I will ask that that portion of the answer be stricken as not responsive.

Mr. Rockwood: It is responsive.

Exam. Dishman: Had you finished your answer?

The Witness: No, I hadn't finished yet.

Exam. Dishman: Are you making a direct reply to his question?

The Witness: Yes.

Exam. Dishman: All right, proceed.

A. I will say that of this sum of thirty-eight million dollars for each company it was in part, in part represents sums advanced for construction purposes prior to the organization of the company. After that period the money was actual cash, was remitted to the S. P. and S. treasury and expended in that manner from that source. But the initial amounts making up these sums were during a period before organization of the company.

Mr. Maguire: Now, Miss Reporter, will you please read the question to the witness.

(The question was read as follows:)

"Q. Mr. Albertson, will you turn to Page 2 of your [fol. 2784] Exhibit 45. On lines 6 and 7 of Page 2 you characterize these two figures opposite the names of Northern Pacific and Great Northern, each amounting to something over thirty-eight million dollars, as a cash contribution. Did either of these two companies who have owned each fifty per cent of the capital stock of the S. P. and S. from its organization, from its inception, did either of them pay anything into the treasury of the S. P. and S. for the stock which was issued?"

Q. Now, would you answer that question, please?

Mr. Maguire: I move the other answer the witness gave be stricken as unresponsive.

Mr. Rockwood: Let's go ahead. You'll find that it's a responsive answer.

Exam. Dishman: All right, let's strike that and start over again.

Do you understand the question?

A. As I understand your question, Mr. Maguire, you are asking me if there was a direct payment to the S. P. and S. in cash for the stock.

By Mr. Maguire:

Q. Yes.

A. As a transaction?

Q. Yes.

A. I will answer that as no.

Q. And then stock was given, was issued, to the two St. Paul companies in consideration of these sums which show on lines 6 and 7, is that correct?

[fol. 2785] A. That is correct.

Q. Now to get to the whole picture, were bonds also issued in addition to the stock?

A. Yes.

Q. And who purchased the bonds or acquired the bonds?

A. The bonds were acquired in the same manner.

Q. And on Page 2 does that represent all of the funds paid in by the Northern Pacific and Great Northern for capital expenditures?

A. No. Did you intend your question to mean for capital expenditures from inception down to date?

Q. Yes.

A. No, it does not.

Q. Then your Page 2 is not correct, is it, because your Page 2 is headed "Gross Capital Expenditures and Source of Funds from Construction Period to December 31, 1954"?

A. You asked me if they had advanced sums other than this for capital expenditures, they have, and those sums have since been repaid.

Q. Oh, I see. And were those in the form of loans?

A. Yes.

Q. So that the net result is that so far as principal sums are concerned the net payments by the Northern Pacific and the Great Northern from the construction period to date, and that is a matter of fact, is during the entire history of the S. P. and S., is it not?

[fol. 2786] A. It is.

Q. The total capital investment made by the Northern Pacific and the Great Northern was thirty-eight million dollars apiece?

A. Yes.

Q. And there were other loans from time to time which have been repaid?

A. That is right.

Q. Do you have any information immediately available to you, Mr. Albertson, with reference to the money that was received by the Great Northern Pacific Steamship Company for the sale of the two steamships, Great Northern and Northern Pacific? Do you know how much they sold those for when they were sold?

A. I would have to approximate that, Mr. Maguire, if that will suffice. I don't have the data before me, but my recollection is that it was approximately four million dollars.

Q. Those were sold to the United States Government or some agency of the government, is that right?

A. That is right.

Q. During the first world war?

A. The first world war.

Q. When was that sale made?

A. The ships?

Q. Yes.

[fol. 2787] A. I believe they were sold in—I think they were commandeered in 1917. I am just recollecting history that I have read of them. I think the actual sale was actually consummated in 1918 or 1919. At least the ships were never returned. I think one of them was lost and the other one, I don't know, my recollection isn't clear what became of that. I think the army or whoever had it retained it for use.

Mr. Rockwood: Speak a little louder.

By Mr. Maguire:

Q. As a matter of fact, the surviving one finally ended up as the H. H. Alexander, didn't it?

A. I think that is right.

Q. The West Coast run?

A. I think that is right.

Q. How many years was the steamship operation conducted by the Great Northern Steamship Company between Oregon and California points, how long did that operation last?

A. Well, it couldn't have been very long. That was before my time. I think we show here that the ships were

built in 1914 and 1915, and they were taken in 1917, so I would say that that approximately is the period that they were in operation. It was just a short period.

Q. You don't have any personal recollection or, as a matter of fact, you weren't with the S. P. and S. at that time?

A. If I was I was a rather small boy. I do remember hearing of them, and they were talked of quite a bit.

[fol. 2788] Q. I am looking at Page 8 of your exhibit—

Mr. Rockwood (interrupting): Page 8?

Mr. Maguire: Eight, yes.

By Mr. Maguire:

Q. These advances, as they are called in the heading, were in part—no, those were all of them loans by the Great Northern and Northern Pacific to the S. P. and S., is that correct?

A. I would say they were advanced on account with the anticipation of their being repaid.

Q. Well, that is a loan, isn't it?

A. Yes.

Q. That has nothing to do, however, and is not included in the sums of thirty-eight million plus dollars apiece shown on Page 2?

A. It is not.

Q. And those all have been repaid, have they?

A. The advances?

Q. Yes.

A. Yes, they have.

Q. All of the sums shown on Page 8?

A. Has been repaid.

Mr. Maguire: Thank you, Mr. Albertson, that is all.

Mr. Rockwood: That is all, Mr. Albertson.

Exam. Dishman: Do you have any objection to the receipt of the exhibit?

[fol. 2789] Mr. Maguire: No, I have no objection to the exhibit.

Exam. Dishman: Exhibit 45 is received in evidence.

(Defendant's Exhibit No. 45, Witness Albertson, was received in evidence.)

Exam. Dishman: The witness is excused.

(Witness excused.)

Mr. Rockwood: Mr. Golden will call the next witness.

[fol. 2790] Mr. Maguire: Mr. Examiner, there has been distributed a 17-page statement.

Exam. Dishman: We haven't identified it yet.

Mr. Golden: It isn't an exhibit.

Mr. Maguire: May we go off the record?

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

We will take a short recess.

(Short recess.)

R. F. Smith was sworn and testified as follows:

Direct examination.

By Mr. Golden:

Q. Would you give your name?

A. My name is R. F. Smith. I reside at St. Paul, Minnesota, and am General Freight Traffic Manager of the Northern Pacific Railway Company, which position I have held since 1947.

My railroad experience dates from 1902 when I was first employed by the Northern Pacific. From that date until 1925 I served in various clerical capacities, except for a period in 1911 to 1915 when I was in the Sales and Service Department. From 1925 to 1947 I was successively Assistant to Freight Traffic Manager, Assistant General Freight Agent, Assistant to General Traffic Manager—Traffic Vice President, and General Freight Agent.

[fol. 2791] Mr. Maguire: Could I interrupt you just a moment, Mr. Smith?

You were assistant to an officer who held the two titles of General Freight Traffic Manager and Traffic Vice President?

The Witness: The title was changed from Traffic Manager to Assistant to General Traffic.

Mr. Maguire: Oh, I see.

A. Practically all of my experience as a traffic officer since 1925 has been in the field of rates and divisions.

It is my purpose to discuss rate-making practices and nature and extent of the control which is exercised by Great Northern and Northern Pacific Traffic Officers at St. Paul over the Traffic Officers of the S. P. and S.

Mr. Maguire: Now, might I interrupt you, please?

If the Examiner please, I wish to object to the next ensuing paragraph of the prepared statement on the grounds that it is a conclusion and is argumentative and also corollary to that discussion in the next entire paragraph, which is a description of practices followed by different officers in the traffic department of the Northern Pacific, and a comparison of those practices with the S. P. and S. Those are conclusions, and what the commission is interested in, of course, in this case is the factual data upon which conclusions can be based. And I believe these entire two paragraphs, together with the first sentence of the first whole paragraph on page two, of the prepared statement are argumentative and are conclusions, and I [fol. 2792] object to those being read.

Mr. Golden: I submit, Mr. Examiner, that the language which is contained in those paragraphs is not a conclusion nor is it argumentative. It is merely a comparison of a method of doing business in connection with the S. P. and S. with that in which the Northern Pacific handles its own business on the west end of its own line. It is purely factual.

Mr. Maguire: Mr. Examiner, the matter in issue here is not how the Northern Pacific Railway Company manages its business through its traffic department. The question is whether the S. P. and S. is under common operation and control—let me read the statute exactly here—is whether the S. P. and S. is under a common management or control with the Northern Pacific in the case of this particular witness. Now, a factual statement of what procedure is followed so far as the traffic officials of the S. P.

and S. is concerned is what is needed as one of the links or one of the elements which would be necessary if the defendants S. P. and S. and their intervenor will prevail in their contention. Now, a comparison between the S. P. and S. and the Northern Pacific traffic department is entirely argumentative, and what we want is factual information.

Mr. Rockwood: May I make a remark?

Exam. Dishman: All right.

Mr. Rockwood: A witness in describing a particular object may compare it with another object for the purpose [fol. 2793] of making his description clear. Thus if I want to describe an object as white I can say it is as white as a particular piece of paper before me. The fact that I use a particular piece of paper before me as illustrative of the degree of whiteness does not make the matter argumentative. If this gentleman wishes to say that the method used is similar to something which he will describe, it is exactly the same process and is not argumentative, and it is a straight statement of fact as to the conduct of business of the S. P. and S. traffic department.

Mr. Maguire: In the first place, Mr. Examiner, we are not interested, it is not within the issues in this case as to what, if any, control the St. Paul officers of the Northern Pacific exercise over their officers in Seattle. The question is, is the S. P. and S. under common management or control with the Northern Pacific, so the facts with regard to the relation between those two companies are the only facts upon which the commission can base its findings.

Mr. Rockwood: And that is the ultimate fact which we are attempting to prove.

Exam. Dishman: I think, Mr. Maguire, it is very improbable that the commission's decision would turn on the data to which you have objected, but since it is put in here as a basis for comparison, why, I will not sustain the objection, so my ruling is the witness may read this into the record.

Mr. Rockwood: You mean you will overrule the objection?

[fol. 2794] Exam. Dishman: I say I will not sustain the objection.

Mr. Rockwood: Thank you.

Mr. Maguire: In order to save time, Mr. Examiner, and I don't wish to take up the time by renewing and interrupting the witness by renewing objections which will all deal with the same point—

Exam. Dishman (interrupting): Yes.

Mr. Maguire (continuing): —I will also direct my objection to the following matter: On page two in the last sentence of the paragraph in the middle of the page I object to the words "as with the parent lines' own officials." That is the sentence commencing "However".

Exam. Dishman: The record will so show.

Mr. Maguire: I will just state all of these at this time, Mr. Examiner, and we will get it behind us.

Exam. Dishman: All right.

Mr. Maguire: Also the single sentence on page two and the entire paragraph, which is the last whole paragraph, commencing with the words "With respect to the Northern Pacific traffic officials at Seattle".

I also wish to make the same objection upon the same grounds to matter contained on page ten of the prepared statement. The first paragraph on that page, commencing with the words "Such a case is not unlike that which occurs", and so on.

I wish at this time to state my objection to—

[fol. 2795] Mr. Golden (interrupting): Does that objection go only to the sentence in which that—

Mr. Maguire (interrupting): No, I said the entire paragraph.

The Witness: Is that on page ten?

Mr. Maguire: On page ten, Mr. Smith.

I also upon the same grounds object to the reading of those portions of the statement.

Exam. Dishman: All right, the record will so show.

Proceed.

A. This control is not unlike the supervision and control which each of the lines at its St. Paul offices exercises over its own traffic officials with headquarters in Seattle.

Thus, specifically for the Northern Pacific, Mr. F. A. Cleveland, who is Western Freight Traffic Manager-Rates, of the Northern Pacific at Seattle, Washington, as a responsible traffic official, is given authority to exercise his own judgment and act with respect to many subjects, but always subject to the power reserved in the St. Paul officials to overrule him with respect to particular matters and direct him with respect to particular matters ordinarily left to his discretion. However, the authority of the St. Paul officials—

By Mr. Golden (interrupting):

Q. Seattle?

A. Excuse me. However, the authority of the Seattle officials is not unlimited, and on innumerable subjects Mr. Cleveland communicates with St. Paul and obtains specific [fol. 2796] authority or directions before he acts.

With the S. P. and S., the practices are substantially the same except that the S. P. and S. traffic officials report to the traffic officials of both of the parent lines at St. Paul. The S. P. and S. officials are given authority by the parent lines to exercise their own judgment and act with respect to particular matters without referring in each case to St. Paul for specific authority or approval. However, as with the parent lines' own officials, the authority given to the S. P. and S. officials is not unlimited, and on innumerable occasions the S. P. and S. officials refer matters to St. Paul for directions before taking action.

With respect to the Northern Pacific traffic officials at Seattle, they, of course, submit proposals only to the Northern Pacific officers at St. Paul.

In the case of the S. P. and S. the officials of that line submit their proposals jointly to the officials of the two parent lines. In the most usual case, submission of proposals by the S. P. and S. to the parent lines is in the form of a joint letter or telegram addressed to a Great Northern official and a Northern Pacific official. When such proposals are received the Northern Pacific and Great Northern officials discuss the proposal between themselves and usually the instruction to the S. P. and S. is in the form of a joint letter or telegram signed by an official of each parent line.

[fol. 2797] There are constant telephone contacts between S. P. and S. traffic officials and officers of the parent lines in Seattle. In such cases which come to my attention it is apparent from my discussion with the Great Northern officials that the Great Northern officials have been advised of the subject likewise by telegram—

Q. (Interrupting): Pardon me, Mr. Smith, did you mean to use the word telephone when you said telegram?

A. (Continuing): —likewise by telephone and are familiar with the matter, so that discussion progresses just as though the submission were in writing.

Although at times different views may be expressed by officials of the two parents with respect to particular matters, the differences are resolved before instructions are issued to the S. P. and S.

Some examples of particular subjects so raised by the S. P. and S. and the disposition of requests from the S. P. and S. are as follows:

On May 8, 1941, R. W. Pickard, G. F. A., S. P. and S. Portland, addressed B. S. Merritt, W. T. M., G. N., and F. A. Cleveland, G. F. A., N. P., at Seattle, advising that rates on lumber from the Coast to Eaton, Colorado, did not apply from stations on the Oregon Electric. He asked if there was any reason why tariff should not be amended to include the Oregon Electric origins.

[fol. 2798] Cleveland addressed J. G. Morrison, G. F. T. M., N. P. at St. Paul, May 10, 1941, suggesting that instructions be issued to include the Oregon Electric route, with copies to Messrs. Pickard and Merritt.

On the same day, B. S. Merritt addressed Messrs. Pickard and Cleveland, stating he saw no reason why tariff should not be amended to include Oregon Electric stations.

On May 15, 1941, instructions were issued to J. G. Stubbs, Chairman, Trans-Continental Freight Bureau, to make the tariff changes agreed to. Tariff change was made effective November 1, 1941, and Pickard advised.

The next example. On June 13, 1946, J. C. Moore, Traffic Manager, S. P. and S., Portland, addressed R. P. Starr,

Western Traffic Manager, G. N., and J. L. Burnham, Western Traffic Manager, N. P., Seattle, with copy of his letter to C. F. Finley, Vice President-Traffic, G. N. and R. W. Clark, Vice President-Traffic, N. P., at St. Paul, on the question of publishing log rates from Dollar, Oregon, on Oregon Electric (a subsidiary of S. P. and S.) to Dallas, Oregon, on Southern Pacific.

After an exchange of correspondence between Seattle and St. Paul offices of G. N. and N. P., Messrs. Clark and Finley dispatched a joint telegram to Moore, June 22, 1946, directing disposition of this rate matter.

The next example. November 29, 1947, George F. Hardy, General Freight Traffic Manager, Great Northern, and [fol. 2799] R. F. Smith, General Freight Traffic Manager, Northern Pacific, St. Paul, addressed a joint letter to J. C. Moore, Traffic Manager, S. P. and S., Portland, R. P. Starr, Western Traffic Manager, G. N., and F. A. Cleveland, Western Freight Traffic Manager, N. P., at Seattle, requesting that arrangements be made to set up a traffic study, review it in detail and submit a recommendation as to what should be done to accomplish simplification of the divisions without making any appreciable change in the total amount of revenue accruing to the Oregon Trunk and Oregon Electric Railways, subsidiaries of the S. P. and S.

This study was made and a basis of simplified divisions for the Oregon Electric and Oregon Trunk was agreed to.

The next example. On May 29, 1948, G. F. Ehlen, General Freight Agent, S. P. and S., addressed G. F. Hardy, General Freight Traffic Manager, Great Northern, and R. F. Smith, General Freight Traffic Manager, Northern Pacific, St. Paul, enclosing an application from Pillsbury Mills, Inc., Los Angeles, California, for a milling-in-transit privilege on wheat at Los Angeles, California, when originating in Texas territory and reshipped to Astoria, Oregon, on the S. P. and S. Mr. Ehlen sought review and advice by Messrs. Hardy and Smith.

In a joint letter by Messrs. Hardy and Smith to Ehlen, June 1, 1948, he was advised that there was no objection to the proposal being placed on the Joint North Coast-California Committee docket—which was done. The matter was considered at a Joint Meeting of the Committee

[fol. 2800] in Seattle, June 23, 1948, and referred to the Southern Pacific and S. P. and S. for disposition. An agreement was reached between the S. P. and S. and Southern Pacific to go ahead with this rate adjustment and it was published January 1, 1949, in North Coast Territorial Directory 40-J.

The next example. Early in 1951, J. C. Moore, Traffic Manager, S. P. and S., and George F. Ehlen, General Freight Agent, S. P. and S., discussed with Messrs. F. A. Cleveland, Western Freight Traffic Manager, N. P., and G. B. King, General Freight Agent, G. N., Seattle, proposition of publicizing for emergency consideration rate of 20 cent cwt. on Petroleum and Petroleum Products between East Pasco, Washington, and Portland, Willbridge and Linnton, Oregon, to meet barge competition (NC Emergency Proposal 1872).

Northern Pacific and Great Northern St. Paul traffic officers acquiesced in the proposed docketing. Rate was approved and published effective April 30, 1951, but was suspended in I. and S. Docket 5918. Decision of I. C. C. July 21, 1952, found rate justified as to westbound traffic but not so on eastbound business.

The next example. January 4, 1951, joint letter from G. F. Ehlen, Assistant Freight Traffic Manager, S. P. and S., Portland, was addressed to R. P. Starr, Western Traffic Manager, G. N., and F. A. Cleveland, Western Freight Traffic Manager, N. P., Seattle, in regard to transit privi- [fol. 2801] leges on lumber at Eugene, Oregon, and division arrangements in connection therewith.

Cleveland of N. P. referred this matter to R. F. Smith, General Freight Traffic Manager, N. P., St. Paul, by letter on January 11, 1952, recommending that we concur in the proposal. In reply to Cleveland, February 8, 1952, Smith approved the proposition.

Starr submitted the same proposal to Hardy of the Great Northern St. Paul office, who concurred, and letters were written to Ehlen by Starr on February 8 and by Cleveland on February 11, 1952, to the effect that the parent lines approved the proposed arrangement.

The next example. February 19, 1952, G. F. Ehlen, Assistant Freight Traffic Manager, S. P. and S., Portland, addressed R. P. Starr, Western Traffic Manager, G. N., and F. A. Cleveland, Western Freight Traffic Manager, N. P., at Seattle, regarding request received from lumber shippers at Lebanon, Oregon, on Oregon Electric, for joint through rates on plywood to points on Union Pacific to enable mills located exclusively on the Oregon Electric to reach Union Pacific destination territory at equal rates, routing to be via Portland to Union Pacific local stations and routing via Laurel, Montana, and Cheyenne, Wyoming, to all Union Pacific stations east of that junction.

On February 25, 1952, F. A. Cleveland addressed R. F. Smith, General Freight Traffic Manager, N. P., St. Paul, on this subject, recommending that we approve proposal [fol. 2802] as submitted by S. P. and S. Smith replied to Cleveland, March 3, 1952, approving the proposition.

Cleveland replied to Ehlen, March 5, 1952, advising that N. P. had no objection to going ahead with the applicant's proposal for joint through rates, and similar advice was given to Starr by Great Northern, St. Paul office, and Starr replied to Ehlen on March 14, 1952, concurring in the proposition.

Next example. June 26, 1953, G. F. Ehlen, Traffic Manager, S. P. and S. Portland, addressed a joint letter to R. F. Smith, General Freight Traffic Manager, N. P., and G. F. Hardy, General Freight Traffic Manager, G. N., at St. Paul, requesting elimination of arbitraries over the Lyle, Washington, rate in connection with Trans-Continental class rates to and from S. P. and S. Goldendale Branch Line. Ehlen desired to know if the parent lines had any objection to his progressing such a proposition on the Trans-Continental Freight Bureau docket.

On July 23, 1953, and August 4, 1953, Messrs. Smith and Hardy advised Ehlen they had no objection to his plan of progressing the proposal. It was subsequently covered by T. C. F. B. Application C-350, in connection with which the Standing Rate Committee recommended approval in report dated November 30, 1953. No objections were recorded to the report and publication was made effective June 15, 1954.

The next example. Under Trans-Continental Rate Advice No. Y-20395, issued February 2, 1954, and Supple-
[fol. 2803] ments 1 and 2 thereto, routing of forest products was established from Mt. Shasta, California, and intermediate points on Southern Pacific to destination territory covered by T. C. F. B. Tariffs 16-I, 17-S, 18-P and 28-O, with routing via Southern Pacific-Portland-Great Northern or Northern Pacific and with a restriction that this routing only applied in connection with shipments given transit privileges at points on Great Northern and Northern Pacific west of Spokane or points on the Southern Pacific in Oregon. No routing was provided from Mt. Shasta and intermediate points in connection with the S. P. and S. north of Portland.

On July 15, 1954, George F. Ehlen, Traffic Manager, S. P. and S., addressed a joint letter to F. J. Conrad, General Traffic Manager, Great Northern, and R. F. Smith, General Freight Traffic Manager, Northern Pacific, St. Paul, referring to rates published from Mt. Shasta, California, and suggesting routing via S. P.-Portland-S. P. and S.-G. N. or N. P. limited to traffic transited on S. P. and S. between Portland and Spokane.

This being a policy matter, Messrs. Conrad and Smith, on August 26, 1954, addressed a joint letter to Traffic Vice Presidents Finley of Great Northern and Berry of Northern Pacific, outlining the S. P. and S. proposition and recommending that it be approved. Subsequently, Messrs. Finley and Berry approved the proposal and Mr. Ehlen of S. P. and S. was so advised in joint letter September 3, 1954, signed by Messrs. Conrad and Smith.

[fol. 2804] I want to say here that a further extension of that same arrangement under the same conditions is being made from Anderson, California, on the Southern Pacific. In other words, the route was put in via the Great Northern and Northern Pacific for transit west of Spokane only and Mr. Ehlen requested that his route be included so that transiting could be done between Portland and Spokane.

Next example. On December 29, 1954, G. F. Ehlen, Traffic Manager, S. P. and S., Portland, addressed a joint letter to F. J. Conrad, General Traffic Manager, Great Northern,

and R. F. Smith, General Freight Traffic Manager, Northern Pacific, St. Paul, with copies to W. F. Nicholson, Western Traffic Manager, G. N., and F. A. Cleveland, Western Freight Traffic Manager, N. P., Seattle, in regard to certain back-haul transit arrangements on eastern grain transited at Vancouver, Washington, when destined Oregon Trunk stations and stations intermediate to Vancouver, Washington, on S. P. and S. The original intent of the initial publication was to permit transit on grain originating at Oregon Trunk stations, Wishram, Washington to Bend, Oregon, inclusive, and S. P. and S. stations as far east as Wishram, Washington, reshipped from Vancouver over G. N. and N. P. routes to the east via Puget Sound gateways. However, as published, eastern grain could be transited at Vancouver, Washington and backhauled to destinations on S. P. and S. intermediate to Wishram, Washington and on Oregon Trunk south of Wishram to [fol. 2805] Bend, Oregon.

This matter was handled by Ehlen with G. N. and N. P. west end traffic officers, who were in agreement with him as to tariff changes necessary to eliminate this back-haul transit arrangement which had been erroneously established.

After conferring on the subject, Messrs. Conrad and Smith, in a joint letter dated January 6, 1955, advised Ehlen that they agreed with him, and copies of this communication were sent to Messrs. Nicholson and Cleveland at Seattle.

Messrs. Conrad and Smith, on the same date, issued joint instructions to M. F. Edbrooke, Chairman, Trans-Continental Freight Bureau, to progress necessary change in Trans-Continental Directory No. 5.

There have been instances in which an inquiry came to the parent lines from the S. P. and S. and was taken out of the hands of the S. P. and S. officers and handled directly with the shipper or connecting carrier from whom the S. P. and S. received the request or inquiry. An example of the procedure in question is the following:

A dispute arose between S. P. and S. and Southern Pacific over divisions on traffic from California to Willbridge, Oregon on S. P. and S. moving prior to January

1, 1944. Negotiations were conducted between J. C. Moore, General Freight and Passenger Agent, S. P. and S., Portland, and H. C. Hallmark, Freight Traffic Manager, Southern Pacific, San Francisco.

[fol. 2805a] On August, and I would like to change that date from August 15 to 18, please, on August 18, 1944, Moore of S. P. and S. addressed a joint letter to P. H. Burnham, Freight Traffic Manager, Great Northern, and J. G. Morrison, General Freight Traffic Manager, Northern Pacific, at St. Paul, asking for suggestions and advice relative to the controversy in question.

On October 5, 1944, a joint reply was made to Moore by Messrs. Burnham and Morrison, advising him as to further procedure. After extended correspondence Messrs. Moore and Hallmark were unable to reach an amicable settlement of the controversy.

On October 31, 1945, Hallmark, Freight Traffic Manager, Southern Pacific, addressed a joint letter to J. G. Morrison, General Freight Traffic Manager, Northern Pacific, and W. D. O'Brien, Assistant Freight Traffic Manager, Great Northern, St. Paul, enlisting their services in having this controversy between S. P. and S. and Southern Pacific resolved in his favor. There was an exchange of letters between Messrs. Moore, Morrison, Hallmark and O'Brien.

On September 10, 1946, joint letter was addressed to Hallmark by J. G. Morrison, General Freight Traffic Manager, Northern Pacific, and George F. Hardy, General Freight Traffic Manager, Great Northern, St. Paul, advising they could not agree with his contentions in the matter. Additional joint letters were exchanged between Hallmark and Messrs. Hardy and Morrison, also between [fol. 2806] Moore of S. P. and S. and Messrs. Hardy and Morrison.

On October 31, 1947, Messrs. Hardy and Smith suggested in a joint letter to H. W. Klein, Freight Traffic Manager, Southern Pacific, that the divisional controversy should again be discussed with the S. P. and S. people in an effort to reach a satisfactory disposition of the matter. In a telegram dated at San Francisco, December 21, 1948, W. W. Hale, Traffic Vice President, Southern Pacific, addressed Messrs. F. J. Berry, Vice President-Traffic,

N. P., and C. F. Finley, Traffic Vice President, G. N., St. Paul, asking that they review this divisional controversy between Southern Pacific and S. P. and S. and advise what action they were prepared to take. A joint letter was addressed to Hale by Messrs. Berry and Finley, September 7, 1949, to the effect that S. P. and S. had suffered losses in revenue equaling or in excess of the amounts which Southern Pacific claimed and for that reason they agreed with conclusions which had already been reached by officers of the S. P. and S., Northern Pacific and Great Northern. On September 18, 1950, Hale addressed joint letter to Messrs. Finley and Berry, with copy to J. C. Moore, Traffic Manager, S. P. and S., to the effect that the Southern Pacific, under the circumstances, was withdrawing their statements of differences against S. P. and S. and allowing the accounts to stand.

Such a case is not unlike that which occurs frequently when the Northern Pacific only is involved. Thus, an [fol. 2807] inquiry or proposal will come from the Northern Pacific official at Seattle to St. Paul, and St. Paul will take the matter over and dispose of it directly without reference back to the Seattle officer. This again illustrates the parallel between the position and authority of the west end traffic officials of the parent lines and the position and authority of the S. P. and S. officials with respect to rate-making policies.

The interests of S. P. and S. in Trans-Continental rate matters is looked after by the parent lines, whose representatives investigate the various docketed rate proposals and issue directions and make decisions in behalf of S. P. and S. without any participation by S. P. and S. traffic officials. An example is the following:

May 19, 1952, J. C. Moore, Traffic Manager, S. P. and S., Portland, addressed joint letter to G. F. Hardy, General Freight Traffic Manager, Great Northern, and R. F. Smith, General Freight Traffic Manager, Northern Pacific, St. Paul, regarding transit privileges on ammunition and explosives and other ordnance at Clover, Utah, and Ordnance, Oregon, final destination Locoda, Oregon, on S. P. and S., sought by Department of the Army.

This matter had been discussed in Chicago by Traffic representatives of the Great Northern, Northern Pacific and Union Pacific earlier in May and it was concluded that this particular route had never been provided for single factor rates in Trans-Continental tariffs. Department of the Army was so advised May 16, 1952. In the [fol. 2808] discussion of this subject, G. N. and N. P. officers represented the S. P. and S.

R. F. Smith, on May 21, and George F. Hardy, on May 26, 1952, wrote J. C. Moore, Traffic Manager, S. P. and S., referring to his letter of May 19, 1952, and advising him that after careful consideration conclusion reached was to decline, after which Chairman W. H. Dana of the Executive Committee, Western Traffic Association, advised Department of the Army, Office of Chief of Transportation, to that effect.

Beginning in January, 1933, and extending to September 1, 1940, the operations of the S. P. and S. were under the direct and immediate supervision of one or the other of the parent lines.

Mr. Maguire: Just a minute, Mr. Smith.

I find I overlooked extending my objection to the paragraph which Mr. Smith has just spoken into the record here. I now move that that be stricken upon the same grounds as my objections to other portions of his statement.

Exam. Dishman: Same ruling as on the previous objection.

A. During this period of operation, the S. P. and S. Traffic Department continued to follow the practice which it had followed before and has followed after that date, of submitting proposals jointly to the traffic officers of the two parent lines, and both parents acting jointly to approve or disapprove S. P. and S. proposals. In other words, the Traffic Department of the parent line generally exercising supervision in that year did not give [fol. 2809] directions to S. P. and S. traffic officials without consultation with the other parent line.

Examples of such handling between 1933 and 1940 are the following:

August 28, 1936, R. W. Pickard, General Freight Agent, S. P. and S., addressed B. S. Merritt, Western Traffic Manager, G. N., and J. L. Burnham, Western Traffic Manager, N. P., at Seattle, with regard to application which he had received from Southern Pacific to duplicate in connection with that line rates on forest products from points west of Portland on Gales Creek and Wilson River and United Railways (subsequently merged with S. P. and S.) to Utah, Colorado and Wyoming territory west of Trans-Continental territory then carried in connection with Union Pacific. Here S. P. and S. sought permission from parent companies to join with Southern Pacific as indicated.

Proposal was submitted by Messrs. Merritt and Burnham to F. R. Newman, Vice President-Traffic, G. N., and R. W. Clark, Vice President-Traffic, N. P., in St. Paul, because of divergence of views.

Because of the difference of opinion held by Seattle traffic officers, Pickard of S. P. and S., on August 17, 1938, addressed Messrs. Newman and Clark, at headquarters in St. Paul, on this same subject. Clark wrote Newman, October 20, 1938, expressing the opinion that S. P. and S. should be authorized to publish joint rates on forest products sought by Southern Pacific. On January 30, [fol. 2810] 1939, Clark advised Pickard that there was no objection on part of N. P. to his proceeding with publication of these rates, which action had been agreed to at a meeting of west end G. N. and N. P. traffic officials in Seattle, with the understanding that the same rates would be published in connection with Great Northern via Bieber, California. On February 7, 1939, Newman so advised Pickard.

Next example. May 20, 1940, R. W. Pickard, General Freight Agent, S. P. and S., Portland, addressed joint letter to B. S. Merritt, W. T. M., G. N., and J. L. Burnham, W. T. M., N. P., Seattle, advising that two plywood plants on Oregon Electric were under construction and suggesting the establishment of joint rates to points on Union Pacific.

Burnham addressed J. G. Morrison, G. F. T. M., N. P. at St. Paul, June 19, 1940, on the subject, requesting advice in the matter.

Morrison addressed F. A. Cleveland, G. F. A., N. P., Seattle, June 29, 1940, to the effect that he had no objection to the proposition.

Cleveland wrote Pickard, July 3, 1940, suggesting subject be considered jointly by the parent lines and the S. P. and S. with a view of agreeing on a program, this meeting to be during the week of July 15, 1940.

At joint meeting of N. P.-G. N.-S. P. and S. Traffic Officers in Seattle, July 19, 1940, it was decided that S. P. [fol. 2811] and S. would discuss the matter with Union Pacific. This was done and on July 19, 1941, H. F. Lounsbury, T. M., Union Pacific, Portland, advised Pickard that after careful consideration it had been concluded that at least for the present they did not desire to proceed with publication of these rates.

The matters to which I have testified are those within my own personal knowledge, many of which were personally handled by me. As a matter of fact, in my experience I have seen correspondence in the files of the Northern Pacific since the S. P. and S. was built which indicates to me that the practices as described above have been followed from the very beginning of the operation of the S. P. and S. The following examples illustrate this fact:

Beginning in January, 1908, H. M. Adams, General Freight and Passenger Agent, Portland and Seattle Railway Company (name changed to Spokane, Portland and Seattle Railway Company, February 1, 1908) corresponded with J. G. Woodworth, Traffic Manager, N. P., and W. P. Kenney, Assistant Traffic Manager, G. N., St. Paul, regarding establishment of through class and commodity rates between Portland and Seattle railway stations and San Francisco, with some steamboat lines operating between San Francisco and Kalama and Astoria.

This general discussion was expanded to include establishing through freight and passenger rates between San Francisco and other Pacific Coast ports and points east [fol. 2812] of Pasco on the N. P. and G. N. and their connections via Portland.

Adams was advised that we could not at the time consent to through rates from and to points east of Pasco,

Washington, and in a letter to Adams, July 11, 1908, Woodworth said:

"There are a good many questions like this which we cannot satisfactorily answer until our superior officers define the general conditions under which business is to be handled in connection with your company. I do not want to evade any of these questions, nor do I want to go further in answering them than the instructions we have received up to date would warrant."

At this time, Francis B. Clarke was President of the S. P. and S., Portland, and Mr. Adams appealed to Mr. Clarke who in turn took the matter up with Mr. J. M. Hannaford, Second Vice President—

Mr. Maguire (interrupting): Did you want to add Traffic after Second Vice President?

The Witness: Yes, I think I should. They called them Second Vice Presidents in those days.

A. (Continuing): —Traffic, Northern Pacific, who concluded that S. P. and S. proposed arrangement could be progressed under certain conditions.

Next example. On January 6, 1913, W. D. Skinner, Traffic Manager, S. P. and S., addressed a joint letter to J. G. Woodworth, Traffic Manager, N. P., and W. P. Kenney, Vice President, G. N., St. Paul, concerning rates on forest products from Bend, Oregon, to Eastern points. [fol. 2813] It had been agreed to adopt the Hood River basis of rates for application from Bend. This basis of rates had been previously agreed to in St. Paul by Messrs. Kenney, Great Northern, and Hannaford and Woodworth, Northern Pacific. It was also agreed to by R. B. Miller, Traffic Manager of the O. W. R. and N. (Union Pacific), Portland, subsequently made a part of the Union Pacific at Portland.

Next example. On February 21, 1913, W. D. Skinner, Traffic Manager, S. P. and S., wired J. G. Woodworth, Traffic Manager, N. P., and W. P. Kenney, Vice President, G. N., St. Paul, requesting authority to join with Swain and Hoyt, who were operating four vessels between Port-

land and San Francisco, in through freight and passenger rates.

Woodworth, on March 15, 1913, after discussing with Kenney, advised Mr. Skinner that parent lines had no objection.

In 1913, the O. W. R. and N. (Union Pacific) were considering publication by their own line of the distributive basis of class rates between Puget Sound and eastern Washington points, including Spokane. This plan was objectionable to the Northern Pacific and Great Northern. There was an exchange of letters between J. G. Woodworth, Second Vice President, Northern Pacific, and W. P. Kenney, Vice President, Great Northern, after which W. D. Skinner, Traffic Manager, S. P. and S., was requested to discuss this situation with R. B. Miller, Traffic Manager, O. W. R. and N. at Portland and tell him how the parent lines felt about it. Skinner, after discussion [fol. 2814] with Mr. Miller, advised Woodworth of his visit and conclusion that O. W. R. and N. would not proceed with contemplated rate changes without full discussion with N. P., G. N. and S. P. and S. Woodworth so advised Mr. Kenney in letter dated January 31, 1914.

Next example. On September 2, 1914, W. D. Skinner, Traffic Manager, S. P. and S., Portland, wired J. B. Baird, Freight Traffic Manager, Northern Pacific, and H. A. Jackson, Assistant Traffic Manager, Great Northern, St. Paul, requesting authority to add Milwaukie, Oregon, on the Portland Railway, Light and Power Company, to Eastbound Lumber Tariffs on the "Coast" basis of rates. Copy of this wire was sent to F. H. Fogarty and G. H. Smitton, Traffic Representatives of Northern Pacific and Great Northern in Portland.

Messrs. Baird and Jackson answered Skinner on September 3, 1914, approving his suggestion.

On September 4, 1914, Skinner wired R. H. Countiss, Agent, Trans-Continental Freight Bureau, Chicago, requesting the change be made in Eastbound Lumber Tariffs, and on September 8, 1914, Agent Countiss addressed Traffic Representatives of N. P., G. N., C. M. St. P. and P., Oregon-Washington R. R. and Navigation Company, Southern Pacific and Soo Line, outlining Mr. Skinner's

request and asking for instructions as to action to be taken thereon by his office for account of the different lines addressed. Henry Blakeley, General Freight Agent, [fol. 2815] Northern Pacific, St. Paul, advised Agent Countiss on September 14, 1914, that the Northern Pacific concurred.

Next example. On March 13, 1922, W. D. Skinner, Traffic Manager, S. P. and S., Portland, addressed a joint telegram to J. G. Woodworth, Vice President, N. P., and W. P. Kenney, Vice President, G. N., St. Paul, regarding increased divisions sought on joint traffic by the Spokane and Eastern Railway and Power Company and the Inland Empire Railroad. He inquired what position parent lines were taking in the matter.

This question was discussed by officers of N. P. and G. N., who concluded that allowances made at that time were fair and reasonable and that no increase could be justified. Skinner was so advised on March 13 and 14, 1922.

Next example. On December 6, 1923, W. D. Skinner, Traffic Manager, S. P. and S. addressed a joint letter to J. G. Woodworth, V. P.-Traffic, N. P., and W. P. Kenney, V. P.-Traffic, G. N., St. Paul, inquiring whether the S. P. and S. should become an intermediate carrier in connection with water and rail rates between California and Inland Empire System points (Spokane and Eastern Railway and Power Company, which later became the Spokane and Inland Empire Railway and was subsequently absorbed by the G. N.). Routing involved was via water carrier to Portland, thence S. P. and S. to Spokane.

Woodworth discussed the matter with Kenney and corresponded with W. F. Coman, W. T. M., N. P., Seattle, [fol. 2816] about it. Woodworth was opposed to these joint rates and so advised Coman on June 4, 1924, and August 23, 1924.

On May 22, 1926, Pickard addressed Coman at Seattle, asking if there would be any objection to checking in rates from California to points on the Inland Empire Railway not reached by Northern Pacific.

Coman replied May 26, 1926, to the effect that the situation had been considered carefully in the past and nothing had since developed to change same.

Next example. Joint telegram August 21, 1924, from R. W. Pickard, General Freight Agent, S. P. and S., Portland, to L. R. Capron, Freight Traffic Manager, N. P., and H. H. Brown, Assistant Freight Traffic Manager, G. N., St. Paul, in regard to rates on lumber from Vernonia, Oregon, to local points on Union Pacific east of Portland. United Railways (S. P. and S.) were agreeable to joint rates to local U. P. stations. Union Pacific declined to join in such rates unless we would open to them all competitive territory; that is to say, permit them to handle Vernonia lumber via Portland and U. P. System to Missouri River and all territory east thereof.

Mr. Maguire (interrupting): May I interrupt you, Mr. Smith?

Does the next sentence in your prepared statement appear in your correspondence or is that your conclusion?

The Witness: Yes, naturally?

Mr. Maguire: Yes, the one starting "Naturally". There [fol. 2817] is that statement in the correspondence?

The Witness: I don't think the word "naturally" is in there.

Mr. Maguire: That is what I thought.

I object to the word "naturally".

Exam. Dishman: Well, that will be stricken.

A. Neither the Great Northern or Northern Pacific would agree to such a proposition.

On November 4, 1924, Pickard again jointly wired Messrs. Capron and Brown requesting concurrence in the position he had assumed. After discussion with J. G. Woodworth, vice president, N. P., and W. P. Kenney, vice president, G. N., Messrs. Capron and Brown wired Pickard, November 6 and 7, 1924, to the effect that there was no objection to through rates on lumber to Union Pacific stations on and west of the Missouri River but no rates via Portland to any points not reached by U. P. At this point Union Pacific threatened to publish proportional rates from Portland to all eastern territory that applied in connection with the local rates of the United Railways would equalize through rates then published in connection with parent lines.

On January 2, 1925, another joint telegram was sent to Messrs. Capron and Brown by Pickard, suggesting that we proceed with publication of rates to Union Pacific local territory Missouri River and west, and take whatever action seemed best should Union Pacific undertake publication of proportional rates as threatened. Pickard asked if this proposed handling was agreeable to Messrs. [fol. 2817a] Capron and Brown. Messrs. Capron and Brown discussed the matter fully on January 3, 1925, and on that day telegraphed Pickard that they had no objection to his plan. Union Pacific concurred in this publication (TCFB Rate Advice No. Y-1150, February 13, 1925, announced publication), effective date April 17, 1925.

On March 9, 1925, R. W. Pickard, General Freight Agent, S. P. and S., addressed joint letter to L. R. Capron, Freight Traffic Manager, N. P., and H. H. Brown, Assistant Freight Traffic Manager, G. N., St. Paul, with copies to W. E. Coman, Western Traffic Manager, N. P., and M. J. Costello, Western Traffic Manager, G. N., Seattle, advising that he had request from Vernonia shipper to establish rates on forest products from Vernonia, Oregon, to points on various short lines in Utah, such as Bamberger Electric, Bingham & Garfield, Idaho Central, Salt Lake & Utah and Toole Valley Railways. Pickard was advised by Messrs. Capron and Brown on March 13, 1925, that the parent lines had no objection to negotiating with Union Pacific for such rates.

By Mr. Golden:

Q. Mr. Smith, are the foregoing examples throughout your prepared statement exhaustive?

Are they all of the examples or are they merely illustrative?

A. They are merely illustrative. I tried to pick dates during all of this period and these examples are illustrative.

[fol 2817b] Q. That is, they are illustrative in the course of doing business?

A. Yes. There are many examples which could be sighted, (sic) of course.

Mr. Golden: You may cross-examine.

Exam. Dishman: We will take a short recess before the cross-examination.

(Short recess.)

Exam. Dishman: The hearing will come to order, gentlemen.

All right, Mr. Maguire.

Cross examination.

By Mr. Maguire:

Q. You stated, Mr. Smith, that the S. P. and S. officials are given authority to exercise their own judgment and act with respect to particular matters without referring in each case to St. Paul for specific authority or approval. Can you give me any example of where the S. P. and S. [fol. 2818] officials have so exercised their own judgment?

A. As a general rule the S. P. and S. proceeds with rate adjustments on its own railroad, local rate adjustments, its road and Oregon Trunk and Oregon Electric.

Q. And are there cases where the S. P. and S. will make joint rates wherein one of the St. Paul lines is involved and the other one is not? Will they enter into those arrangements for joint rates, say, for example, to a point on the Northern Pacific, without taking that up with St. Paul, other than would ordinarily be done between two carriers in the establishment of joint rates?

A. I am just trying to think of an example. I don't recall of any.

Q. Well, say this—I will give you an example—say a joint rate between Eugene and Missoula, which is a point served by the Northern Pacific but not the Great Northern. Would any action be taken or any authority be secured by the S. P. and S. traffic officials from the Great Northern in a case of that kind?

A. In a case of that kind, Mr. Maguire, the S. P. and S. might place the subject on the North Pacific Coast Freight Bureau Docket and in that way notice would be given to the Great Northern and Northern Pacific.

Q. And also to the Union Pacific and Milwaukee, too, wouldn't it?

A. That is right.

[fol. 2819] Q. In a case of that sort the S. P. and S. would act independently of St. Paul, would it not?

A. Yes.

Q. Now, there are cases where the S. P. and S. and the Great Northern—

Mr. Golden (interrupting): May I interrupt. In this last question that you have here, in order to clarify it to me, do you mean independently of the Northern Pacific?

Mr. Maguire: Why, no I said otherwise by negotiation with the Northern Pacific.

Mr. Torinus: You said independently of St. Paul.

Mr. Maguire: I said independently of Great Northern.

Mr. Torinus: You said independently of St. Paul.

Mr. Maguire: I think the record will speak for itself on that. If you wish to develop it further, you may do so. I wish you wouldn't interrupt unless you are objecting.

Mr. Torinus: If you said independently of St. Paul did you mean independently of the Great Northern and not the Northern Pacific at St. Paul?

Mr. Maguire: The question will speak for itself. If on redirect anyone wishes to bring out any other aspects of it they are at perfect liberty to do it.

Mr. Torinus: You don't care to clarify that remark, then.

Mr. Maguire: I think the question is absolutely clear and I do not care to rehash questions that I have asked before.

[fol. 2820] Exam. Dishman: Does the witness understand it?

The Witness: Well, the question has gotten away from me now.

Mr. Maguire: Well, the witness didn't say he misunderstood it.

Exam. Dishman: Would you read the question so the witness—

(Question read.)

Mr. Maguire: What was the answer?

(Answer read.)

By Mr. Maguire:

Q. Did you misunderstand that question, Mr. Smith? Is that question clear to you?

A. Your question is whether the S. P. and S. would take up with St. Paul before putting a proposition of that kind on the North Pacific Coast Docket?

Q. Yes.

A. Well, if it were a policy adjustment of rates they might take up with St. Paul first. It would depend upon the type of rate that was being considered, I would say.

Q. Well, suppose there were—this may be entirely right—suppose there was no new rate existing, a commodity rate that was established from Eugene and Missoula, which is between G. N. and N. P. is as its N. P. local point, would that be referred jointly to the Traffic Officers of the two St. Paul railroads before it was discussed with the Northern Pacific or before it was put upon the Docket?

A. Would you read the first part of that question?

[fol. 2821] (Question read.)

By Mr. Maguire:

Q. The traffic officers of the—

A. (Interrupting): Now, I think the answer to that would depend entirely upon what kind of rate adjustment it was. If it was a rate adjustment to Missoula it might affect Kalispell on the Great Northern or some other point, then I think the S. P. and S., before it proposed something specific to us, would clear with the Great Northern.

Q. And that would be done by referring the matter jointly to the St. Paul traffic officers of the Northern Pacific and Great Northern, would it not?

A. Either that or it might be referred to the traffic officers of the Northern Pacific and the Great Northern at Seattle.

Q. Yes, those officers at Seattle of the two St. Paul lines have had certain authority delegated to them in dealings concerning the S. P. and S., have they not?

A. Yes, they deal with local matters to a certain extent out there, if they don't involve an important policy question or policy question at all.

Q. But would it be fair to say that the S. P. and S. conducts its own business, its own traffic activities in its own ways unless there are general questions of policy involved, and that in those cases they go to the St. Paul lines?

A. Well, they confine that to their local rates. It would be more applicable to their local rates than it would to joint [fol. 2822] rates or Transcontinental rates, and in those instances, of course, it is the general policy of the S. P. and S. to confer with their parent lines before doing anything.

Q. Now, then, as you pointed out in connection with the discussions which commenced in January 1908 Mr. Woodworth of the Northern Pacific advised Mr. Adams of the S. P. and S. that there were a good many questions which could not satisfactorily be answered until "our superior officers define the general conditions". Now, I gather from that that in 1908 the traffic officers of the two St. Paul lines had not had clearly defined to them what authority with regard to S. P. and S. rates and policies were delegated to them by their respective presidents, is that true?

A. There must have been some uncertainty as to all of the policies, yes.

Q. And as to what authority was delegated to them by their presidents?

A. Well, I don't know as to that.

Q. As a matter of fact, the traffic officers of the two St. Paul lines, in dealing with traffic matters, are acting as representatives of the presidents of the two St. Paul lines, are they not?

A. Why, they would be—I am not sure that I understand that question.

Q. I said that the traffic officers of the Northern Pacific [fol. 2823] and Great Northern, insofar as they exercise any control over the S. P. and S., are acting as representatives of their respective presidents.

A. Yes, I would say so.

Q. And those two presidents are the two members of the Executive Committee of the S. P. and S., are they not? You heard Mr. Poore's and Mr. Turnburke's testimony?

A. I did.

Q. That is true, isn't it?

A. As I understand it, yes.

Q. If either one of the two St. Paul lines objects to anything that is proposed by the S. P. and S. and persists in its objections, what happens to the proposal? Suppose one is in favor and the other is opposed, what happens to that proposal?

A. Well, if there is an objection by one of the parents to the S. P. and S. usually those matters are resolved before any advice is given the S. P. and S. If it is a joint proposition it is considered.

Q. It must be a unanimous agreement, regardless of whether the two St. Paul lines were agreed in the first instance or in the first phases or not, isn't that true?

A. Yes, it has to be agreed to.

Q. I am going to ask you, Mr. Smith, what you would do under these circumstances, you being the General Freight Traffic Manager of the Northern Pacific. Suppose that the [fol. 2824] S. P. and S. communicates to you a proposal, a rate proposal, you are unalterably opposed to it, the Great Northern, your opposite number, the great number is willing to go along with the S. P. and S. proposal. You two gentlemen, you and Mr. Conrad it would be, of the Great Northern, argue this matter out between you but you still can't agree, you can't strike any compromise. What will happen to that S. P. and S. proposal?

A. Well, it would then, I presume, be appealed to the traffic vice-presidents by the S. P. and S., if we couldn't come to an agreement or we might take it to the vice-presidents ourselves.

Q. Yes, and suppose you sell your vice-president a bill of goods and Mr. Conrad does the same thing with his and so the disagreement persists. Then what would happen to the proposal?

A. You mean what would the vice-presidents do with it?

Q. No. I said suppose that your vice-president agreed with you and was just as unalterably opposed to it as you are but that Mr. Conrad's vice-president, Mr. Finley, would take Mr. Conrad's point of view and say we concur or we agree with the S. P. and S. proposal. Now, then, when you get to that stage of disagreement what would happen to it?

A. Well, I suppose the S. P. and S. would have the right to take it to the presidents.

Q. All right, let us take it one step further. We will get this to the Board of Directors, if we have to. Suppose the presidents—

[fol. 2825] A. (Interrupting): This is a hypothetical thing now?

Q. Yes. Suppose the presidents, now, come to a final disagreement on it, your president is absolutely opposed, the Great Northern president is in favor of it. What is going to happen to that proposition?

A. I don't know.

Q. Nothing would happen to it, would it?

A. No.

Q. Because you couldn't agree?

A. That is right.

Q. It would be dropped?

A. That is right.

Q. And so where there are differences of opinion between the two St. Paul lines, the executives of the St. Paul lines, as to any traffic matter of the S. P. and S., unless any differences of opinion can be adjusted between them so that finally a unanimous decision is reached, no action is taken upon the proposal, isn't that true?

A. That is right.

Q. I notice that on November—I want to refer now to this letter of November 29 or this question that was started on November 29, 1947. It appears on page four of your prepared testimony. That involves divisions, a simplification of divisions. Was that division between the S. P. and S. on the one hand and the Oregon Electric and Oregon Trunk [fol. 2826] on the other that was involved in that discussion?

A. No, that was divisions between the parent lines and the S. P. and S. and subsidiaries, the Oregon Trunk, or Oregon Electric rather.

Q. I don't want to argue with you about this, Mr. Smith, but you said that to accomplish, and I am quoting, "to accomplish simplification of the divisions without making any appreciable change in the total amount of revenue accruing to the Oregon Trunk and Oregon Electric, subsidiaries to the S. P. and S.", and I don't find any reference in your account of it, at least.

A. That is the joint divisions that was under considera-

tion and we wanted to have a simplified basis division from what it had previously been.

Q. What divisions are we talking about then. I beg your pardon, I interrupted you. Maybe you had better finish your answer there.

A. I say the divisions were those between the parent companies and the S. P. and S., or the Oregon Trunk and Oregon Electric.

Q. On a shipment, then, we will say which originates on the Oregon Electric, taken by the S. P. and S., either to Pasco or to Spokane, and there delivered to the Northern Pacific, there are division sheets entered into between the Northern Pacific and the S. P. and S. and the Oregon Electric, are there not?

A. That is right.

[fol. 2827] Q. And those divisions are arrived at in the first instance in what manner, by negotiation?

A. Those divisions, as I recall it, were discussed by the parent lines and the S. P. and S. about 1940. I mean the division arrangement that is in effect at the present time. My recollection is that the executive officers got together and approved those divisions in 1940.

Q. What executive officers, the Great Northern, Northern Pacific, and S. P. and S.?

A. That is right.

Q. And the S. P. and S. in those cases spoke for their wholly owned subsidiaries, the Oregon Trunk and Oregon Electric?

A. Yes.

Q. Would you be able to tell us, not necessarily by the names of the individuals but by the titles, at least, what officers of the three companies participated in these negotiations?

Mr. Rockwood: Excuse me. Do you refer to negotiations in 1940 or 1947?

Mr. Maguire: The 1940 that Mr. Smith has mentioned.

A. I can't, Mr. Maguire, at the moment. I'd have to—

Q. (Interrupting) But all three companies participated, that is, representatives of all three companies, participated in these negotiations, did they not?

A. To my recollection.

Q. And on any rates that are established regardless of [fol. 2828] the procedure prior to their establishment the divisions accruing to the S. P. and S. or its subsidiaries, as between the S. P. and S. and the G. N. or the N. P., as the case may be, are determined by negotiation and discussion between a representative of the S. P. and S. and a representative of the other St. Paul line which is involved, is that true?

A. Yes, if no divisions are in effect to cover that particular traffic they would be discussed in that manner.

Q. Yes, and will be negotiated in the ordinary course of business?

A. Well, yes, there has to be some basis for dividing the money.

Q. Now, will you turn to page five of your prepared testimony, and I am referring to the item at the bottom of the page, which involved transit privileges on lumber at Eugene and division arrangements in connection therewith, discussion of which was instituted by joint letter from Mr. Ehlen, dated January 4, 1951. In your discussion of that Mr. Starr, who was Western Traffic Manager of the Great Northern, and Mr. Cleveland, Western Traffic Manager of the Northern Pacific, advised Mr. Ehlen of the S. P. and S. by letter to the effect that the proposed arrangement was approved. Now were Messrs. Starr and Cleveland acting under authority which was conferred upon them by their superiors, respective superiors, in St. Paul?

A. That is right.

Q. And let us go up that same page where there is the [fol. 2829] remainder of a discussion of a matter which was opened on May 29, 1948, by Mr. Ehlen, regarding application from Pillsbury Mills.

Mr. Golden: What page is this, Mr. Maguire?

Mr. Maguire: Page five, which finishes what starts on page four.

By Mr. Maguire:

Q. Now, this matter was placed upon the joint North Coast-California Committee docket and you go on to say that an agreement was reached between the S. P. and S. and

Southern Pacific to go ahead with this rate adjustment. Was that agreement reached by negotiation between the representative of the S. P. and S. and the representative of the Southern Pacific?

A. The agreement was approved at a regular committee meeting. The instructions that we gave—when I say we, I mean Mr. Hardy and myself—gave to Mr. Ehlen was that there was no objection to putting the proposition on the joint California-North Coast docket.

Q. Yes.

A. It was disposed of at a meeting of that committee.

Q. It was referred to the Southern Pacific and S. P. and S. for disposition, was it not?

A. That is right.

Q. And so therefore representatives of the S. P. and S. and the Southern Pacific reached the agreement which you mentioned in the last sentence of that item?

[fol. 2830] A. That is right.

Q. Would you refer, Mr. Smith, to page six of your prepared testimony, which covers a matter, the bottom part of that page covers a matter instituted on June 26, 1953 by Mr. Ehlen's letter of that date regarding elimination of arbitraries. You then go on to state at the end of that paragraph, "Ehlen desired to know if the parent lines had any objection to his progressing such a proposition on the Transcontinental Freight Bureau docket", and you further say that Mr. Ehlen was advised that there was no objection to this plan of progressing the proposal. Did Mr. Ehlen progress that proposal on the Transcontinental Freight Bureau docket?

A. I don't think he did. I think either the Great Northern or our company jointly. We put it on the docket. Now, I am not certain about that without looking at the file.

Q. There have been cases where the S. P. and S. traffic executive has had matters placed on the Transcontinental Freight Bureau docket, in the name of the S. P. and S., hasn't it?

A. Offhand I can't recall any. There may have been, Mr. Maguire, but I don't recall any now at this time. Mr. Ehlen, who will be on the stand, can probably answer that question better than I.

Q. Yes, I know that he will. But there is no objection so far as the necessary approval of the acts of the executive committee of the S. P. and S. is concerned, if that has been procured, there is no objection to the S. P. and S. filing [fol. 2831] proposals on the Transcontinental Freight Bureau docket, is there?

A. I wouldn't think there would be any particular objection, it just hasn't been done at all. The parents have been called upon to look after the interests of the S. P. and S. by docketing these proposals, but it doesn't mean that Mr. Ehlen couldn't get permission from the parent lines to put something on the docket, if he wanted to. Anyone can put a proposition on the Transcontinental docket.

Q. Well, now, Mr. Smith, after the policy question is decided upon by the traffic executives of the Great Northern and Northern Pacific, you don't mean to say that your supervision over the S. P. and S. extends so far down in detail that Mr. Ehlen has to get your permission to place a matter on the docket which has already been approved, do you?

A. Oh, I wouldn't think so.

Q. I wouldn't either. And, as a matter of fact, if I can refresh your memory, wasn't that very thing done back in the 1920's in connection with rates, lumber rates, eastbound lumber rates of the S. P. and S. to local points on the Milwaukee? Was that not docketed with the Transcontinental Freight Bureau by the S. P. and S. direct?

A. I don't know.

Q. If you don't know, why, I won't follow.

There is another division of your testimony covering inquiries which were instituted by the S. P. and S. with the [fol. 2832] St. Paul lines following which the matter was taken out of the hands of the S. P. and S. officers and handled directly with the shipper or connecting carrier. Now, in those instances the St. Paul traffic executives are acting under authority conferred upon them through the chain of command, so to speak, by the presidents of their respective lines, are they not?

A. Yes, I would think so.

Q. For your convenience, Mr. Smith, turn to page 11 of your prepared statement, I want to talk about some of your

testimony. Now, you speak of the period of operation of the S. P. and S. beginning in January 1933 and extending to September 1, 1940. I believe that that is what Mr. C. A. Hart characterized in his testimony, which you heard, as the second phase of management.

A. Yes, I believe that is how he designated it.

Q. And at that time the presidents of the Great Northern and Northern Pacific were each elected for one-year terms as president of the S. P. and S., the Northern Pacific taking the odd years or the Great Northern president taking it in the even years?

A. Yes.

Q. And at that time there was no resident vice-president of the S. P. and S. in Portland, isn't that true?

A. I believe that is correct. I am not dead sure of that.

Q. What you mean to say, then, that in the year when the Northern Pacific president was also president of the S. P. [fol. 2833] and S., that Northern Pacific traffic department did not take full charge and responsibility for traffic affairs of the S. P. and S., isn't that what you mean to say?

A. Well, I mean to say that rate matters continued to be handled as they had been before.

Q. Yes, that is it. And when you say—in other words, you say the traffic department of the parent lines generally exercising supervision in that year did not give directions to S. P. and S. traffic officials without consultation from the other parent lines, and also we could add to that, not only without consultation but also without agreement of the other parent line, couldn't we?

A. Yes, I think that is right.

Q. In other words, the same situation exists at the present time, doesn't it, Mr. MacFarlane is president of the S. P. and S. this year, is he not?

A. Yes.

Q. In your position as general freight traffic manager you would not take it upon yourself to issue instructions of any kind to the S. P. and S. as Mr. MacFarlane's representative without getting the full concurrence of Mr. Conrad, who is Mr. Budd's representative in these matters, would you?

A. No.

Q. Going along on that page, on page 11, you showed

some examples of handling between 1933 and 1940, and you [fol. 2834] speak of a divergence of views between the Great Northern and Northern Pacific traffic vice-presidents—no, no—a divergence of views between the western traffic managers of the N. P. and G. N. which were submitted to the traffic vice-presidents, and on that occasion the general freight agent of the S. P. and S. wrote direct to the traffic vice-presidents of the G. N. and N. P., did he not?

A. That is right.

Q. And the final concurrence or agreement of the two traffic vice-presidents was a compromise of their former divergent views, was it not?

A. Yes, they must have gotten together.

Q. And compromised, because I noticed there was a condition proposed here in the final agreement.

A. That is right.

Q. I just notice one thing here, Mr. Smith, as to the S. P. and S. officers taking up matters direct with the Transcontinental Freight Bureau. Look at page 14 of your testimony. On September 4, 1914, Mr. Skinner, who was traffic manager of the S. P. and S., wired R. H. Countiss, agent, Transcontinental Freight Bureau, requesting a change in the eastbound lumber tariffs and that Mr. Countiss referred it to interested carriers for action. Now, that was an actual docketing with the Transcontinental Freight Bureau, wasn't it?

A. That is right.

[fol. 2835] Q. And that was done directly by the S. P. and S.?

A. Yes.

Q. On page 15, up at the top of the page, which refers to the same matter that I just questioned you about, when you state that general freight agent Blakeley of the Northern Pacific advised agent Countiss on September 14, 1914, that the Northern Pacific concurred, that is merely a concurrence in the report of the Transcontinental Freight Bureau, is it not? It is not a concurrence as between the Great Northern and Northern Pacific you are talking about?

A. No, that is a concurrence in the proposal that is on the docket.

Q. Yes, that is what I assumed. Now farther down on page 15 you discussed a matter which was raised by letter from Mr. Skinner of the S. P. and S. dated December 6, 1923, regarding joint water and rail rates to which the S. P. and S. proposed to become a party. You state that Northern Pacific vice-president was opposed. What was the position of the Great Northern in that connection or do your files show?

A. I don't think the files showed that, Mr. Maguire, if I recollect correctly.

Q. But, anyway, regardless of the Great Northern's position, the fact that the Northern Pacific was opposed to it killed it, didn't it?

A. That is right.

[fol. 2836] Q. When the S. P. and S. enters into or establishes joint rates with any line other than the Northern Pacific or Great Northern, who negotiates the divisions so far as the S. P. and S. is concerned?

A. You mean a S. P. and S. rate proposal with another railroad?

Q. No, a rate is established, a new rate is established—I am not going back into the machinery prior to its establishment—between the S. P. and S., we will say, and the Union Pacific, a point to point commodity rate, a joint through commodity rate, divisions have to be agreed upon under that rate, do they not?

A. That is right.

Q. Who takes part in the negotiations of those divisions so far as the S. P. and S. is concerned?

A. Well, if there were no established divisions that might be applicable to that particular movement, the S. P. and S. in some instances might negotiate their own division. If it were an important adjustment of rates and an important question how the rates should be divided as between the S. P. and S. system and the other line or lines, then Mr. Ehlen no doubt would get approval from St. Paul.

Q. Yes. In other words, if there were an important general policy question involved?

A. That is right.

Q. But otherwise he would negotiate his own divisions?
A. That's right.

[fol. 2837] The Witness: I hope I am right, George, I think that is the way it is handled.

Mr. Maguire: I think that is all. Thank you.

Exam. Dishman: Do you have any other questions, Mr. Golden?

Mr. Golden: Yes, I do.

Redirect examination.

By Mr. Golden:

Q. On this matter of the negotiation of divisions, I would like to give you a hypothesis which perhaps may not be a hypothesis, I don't know. If the Northern Pacific were engaged in negotiating, either rates or divisions, with another line on the west coast and you were conducting those negotiations, Mr. Smith, is there any possibility that you would have with you Mr. Cleveland of your west end office?

A. Why, yes.

Q. Would Mr. Cleveland in a situation of that sort be in a position to overrule you as to what the final decision would be?

A. No.

Q. Similarly, in the negotiation of rates between the S. P. and S., the Great Northern, and the Northern Pacific, or in the establishment of divisions, would the presence of the S. P. and S. official indicate that he would have authority to make a decision as to what the division would be?

A. No.

Q. In instances in which divisions are negotiated between the S. P. and S. and another line, for example, the [fol. 2838] Union Pacific, as Mr. Maguire stated, does the S. P. and S. traffic official have delegated to him some authority to make divisions in certain instances?

A. He does.

Q. Is it an unlimited authority?

A. No.

Q. Mr. Smith, when you take action with regard to S. P. and S. matters, do you do so under authority that is dele-

gated to you by your superiors on the Northern Pacific or by the executive committee of the S. P. and S.?

A. Yes.

Q. I gave you a choice there. Does your authority come from your Northern Pacific superiors or from the executive committee of the S. P. and S.?

Mr. Maguire: Just a moment, Mr. Smith.

I think that counsel is trying to spin a pretty fine point there, the legal effect of the status of these parties—

Mr. Rockwood (interrupting): Mr. Examiner, that's what Mr. Maguire has been doing in trying to dress up these two presidents in various suits of clothes depending upon the fact that Mr. Maguire wanted to get from the witness.

Mr. Maguire: There is one difference. I have said from the presidents who are also members of the executive committee. Now, Mr. Golden is asking a different question.

Mr. Rockwood: Of course he is.

[fol. 2839] Mr. Maguire: He is asking this witness whether the presidents were acting in the capacity of the Great Northern or Northern Pacific respectively or the Northern Pacific in Mr. Smith's case or whether his president was acting as a member of the executive committee of the S. P. and S. I don't believe Mr. Smith can answer that question.

Exam. Dishman: Can you answer it, Mr. Smith?

The Witness: I don't believe I understand it.

A. My authority comes from the traffic vice-presidents under whom I work.

By Mr. Golden:

Q. Of the Northern Pacific?

A. Of the Northern Pacific.

Q. Is the vice-president in charge of traffic on the Northern Pacific an official of the S. P. and S.?

A. No.

Q. Do you know whether or not the executive committee of the S. P. and S. has ever passed a resolution authorizing you or your vice-president to take the action that you do with regard to S. P. and S. matters?

A. Not in my 53 years of service.

Mr. Maguire: You mean you don't know that in your 53 years?

The Witness: No, sir.

Mr. Maguire: You haven't known it for a long time, then.

Mr. Golden: That is all.

Exam. Dishman: Are there any other questions?

[fol. 2840] Mr. Maguire: Just one little pickup here.

Recross examination.

By Mr. Maguire:

Q. When the S. P. and S. are negotiating divisions under the conditions you and I were talking about, Mr. Smith, say, with the Northern Pacific, those negotiations are conducted by an officer of the S. P. and S., are they not? He is not merely in attendance while an officer of one of the so-called parent lines conducts them, he would be conducting them, wouldn't he?

A. He would be there representing his line.

Q. And would you be there?

A. I might be.

Q. Would you ordinarily be there? Do you make it a practice to be present at all division conferences?

A. No, I don't, not all.

Q. As a matter of fact, subject to the general policies which you have mentioned, the S. P. and S. conduct their own negotiations and they have authority within the framework of the general policies, do they not?

A. That is right.

Mr. Maguire: I thank you, Mr. Smith.

Redirect examination.

By Mr. Golden:

Q. Similarly, Mr. Smith, does Mr. Cleveland, your west end representative on the Northern Pacific ever negotiate rates and divisions without your presence?

[fol. 2841] A. Yes, he does.

Q. And he has some limited authority to do that?

A. Yes, he does.

Mr. Golden: That is all.
Mr. Maguire: Nothing further.
Exam. Dishman: The witness is excused.

(Witness excused.)

Mr. Torinus: Mr. Examiner, the next witness may take some time. I suggest we adjourn now for lunch.
Exam. Dishman: Would you care to have him distribute his exhibit and statement?
Mr. Torinus: Sure.
Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record. We will now recess for lunch until 2:00 p.m.

(Whereupon, at 12:30 p.m., a recess was taken until 2:00 p.m. of the same day.)

[fol. 2842] AFTERNOON SESSION 2 o'clock p.m.

Exam. Dishman: The hearing will now be resumed.
Mr. Torinus: I will call Mr. Lear.

H. D. LEAR was sworn and testified as follows:

Mr. Torinus: Mr. Examiner, may the exhibit which has been distributed just prior to Mr. Lear being called to the stand be identified?
Exam. Dishman: It will be identified as Exhibit No. 46.

(Defendant's Exhibit No. 46, Witness Lear, was marked for identification.)

Direct examination.

By Mr. Torinus:

Q. Mr. Lear, will you state your name, residence and occupation, please?
A. My name is H. D. Lear, general statistician, Great Northern Railway Company, St. Paul, Minnesota.

Q. Will you state briefly your railroad experience?

A. My railroad experience began on April 16, 1943, with the Pacific Coast Railroad Company at Seattle, Washington as assistant to the superintendent and assistant general freight agent. The Pacific Coast Railroad—incidentally, that correct corporate name is Pacific Coast R.R. Co., rather than spelled out—is a Class II common carrier operating in a general southeasterly direction from Seattle, the rails of which are used as a part of the Milwaukee main line between Spokane Street, Seattle and Maple Valley, [fol. 2843] Washington.

In 1947 I was appointed assistant superintendent to that railroad and in 1948 superintendent and general freight agent, which position I held until November 1, 1951, when the Great Northern Railway Company purchased the Pacific Coast, and I was transferred to St. Paul as statistician for the Great Northern. I received my promotion to my present position January 1 this year.

Q. Mr. Lear, did you have some accounting and statistical experience before you entered the employ of the Pacific Coast Railroad in 1943?

A. Yes, I did.

Q. Will you just tell us briefly what that was?

A. From 1935 to 1938 I was employed by the Washington State Highway Cost Commission and the Washington State Highway Department doing statistical and accounting work. In fact, I was statistician for the Highway Cost Commission.

Q. Will you tell us what your present duties are as general statistician of the Great Northern Railway Company in St. Paul?

A. As general statistician of the Great Northern Railway I analyze, prepare and supervise the preparation of various statistical statements and other compilations of data, both for the use of the management of the company and for introduction in proceedings before the Interstate Commerce Commission and the various state commissions.

[fol. 2844] Q. Have you prepared, Mr. Lear, at my request a statistical study for introduction in evidence in this case?

A. Yes, I have.

Q. That study is the exhibit which has just been distributed and identified as Exhibit 46, is that correct?

A. That is.

Q. And was that exhibit, Exhibit 46, prepared under your supervision and direction?

A. It was.

Q. And are the contents of Exhibit 46 true and correct, to the best of your knowledge and belief?

A. They are. Excuse me, Mr. Torinus, but I didn't give you my traffic experience between '38 and 1943.

Q. I'd like to have you do that. I'd like to have that in the record.

A. Thank you.

Between 1938 and 1943 when I went with the Pacific Coast Railroad Company I was engaged in traffic work, three and a half years as rate clerk for the West Coast Lumbermen's Association at Seattle, Washington, primarily concerned with the analyzing of tariffs and the making of the freight rate book that that organization distributes to its members.

Beginning in 1942 and for the balance of the period I was employed as assistant to the traffic manager of the Boeing Airplane Company at Renton, Washington.

[fol. 2845] Q. Now, Mr. Lear, will you take up Exhibit No. 46 and first explain generally what that exhibit is?

A. Exhibit No. 46 is a statement of the traffic handled by the Great Northern in the year 1953 in connection with the S. P. and S. via Spokane, Washington, which would be subject to Milwaukee solicitation if they are successful in this case.

Q. You may proceed, Mr. Lear, and explain the exhibit, starting with Page 1.

A. Page 1 is really the key to the exhibit. It gives the definition of all the terms used in the exhibit, together with the traffic groups and examples of stations included in each of the traffic groups.

Q. Before you go on with that definition of terms, traffic groups, on Page 1, I want to ask you a general question about traffic included in the exhibit. Does that include all the traffic that the Great Northern interchanged with the S. P. and S. in 1953?

A. No, it does not.

Q. Can you tell us just what traffic it does include?

A. Basically it includes three types of traffic only. In the first place, it includes only traffic that originates at or terminates at stations of the Spokane, Portland and Seattle Railway, the Oregon Trunk Railway and the Oregon Electric Railway. Second, on the other hand, on these same shipments originating or terminating on the S. P. and S. [fol. 2846] system stations, the other end of the movement must be east of Spokane, Washington, at some station which the Milwaukee is seeking rates to in this proceeding.

The third criteria in selecting the traffic in this exhibit was the fact that it was interchanged between the Great Northern and the Spokane, Portland and Seattle Railway at Spokane, Washington, the junction named by the Milwaukee in their complaint. No other types of Great Northern, S. P. and S., traffic are included in this exhibit.

Q. Before going ahead with your explanation of the pages of the exhibit can you tell us the source of the data in the study?

A. This data was all drawn from the records of the Great Northern Railway Company, the exact record being the copy of the interlined abstract covering each car contained in the study.

Q. All right. Now you can proceed with your explanation of Page 1.

A. The first step in making this study was the determination of the ten traffic groups. This step was necessary before the study could be commenced. Groups 1 through 5 are all eastbound traffic originating on the S. P. and S. system and destined to various stations east of Spokane.

Groups 6 through 10 are the identical movement in the westbound direction.

Group 1, for example, is the eastbound movement of the same traffic that is covered in Group 6 for westbound. [fol. 2847] 2 and 7 coincide and so forth.

Q. Groups 6 to 10 are traffic terminating on the S. P. and S. system lines, Groups 1 to 5 traffic originating on the S. P. and S. system lines, is that correct?

A. Correct.

Q. All right. You may proceed.

A. I will talk about the eastbound groups, and it will be understood that whatever explanation I make about the eastbound will apply equally well in the reverse direction for the westbound.

Group No. 1 was traffic originating on the S. P. and S. system which terminated in the year 1953 at Great Northern stations which are common with the Milwaukee Road. Examples of such are shown on Page 1, like Great Falls, Montana, Fargo, North Dakota, Aberdeen, South Dakota, Sioux City, Iowa, and St. Paul, Minnesota. There were seven hundred and six cars included in the study in this Traffic Group 1 for eastbound traffic. In the westbound comparable Traffic Group 6 there are eight hundred eighty-four cars included in the study.

Q. Those figures 706 and 884—

A. (Interrupting): They appear on the first line of Page 2 in Column (e) and (f).

Q. All right. Proceed, Mr. Lear.

A. Traffic Group 2 is traffic originating on the S. P. and S. System, which terminated in the year 1953 at Great Northern stations which are common with the connections [fol. 2848] of the Milwaukee Road. Examples of these destinations would be Minot, North Dakota, on the Soo Line, Marshall, Minnesota, on the C. & N. W., Virginia, Minnesota, on D. M. & I. R., and Watertown, South Dakota, on the M. & St. L. and C. & N. W.

Mr. Maguire: May I interrupt here for a question, Mr. Torinus?

Mr. Torinus: Yes, sir.

Mr. Maguire: These are, however, all of them, Great Northern stations?

The Witness: Correct.

Mr. Maguire: And are reached only so far as the Milwaukee is concerned by its connections, is that correct?

The Witness: That is correct.

Mr. Maguire: Thank you.

A. Most of these stations, as a matter of fact, are located on the Soo Line in this group. There are eighty-

eight cars in eastbound traffic Group 2 and fifty-four cars in westbound traffic Group 7.

Traffic Group No. 3 is traffic originating on the S. P. and S. System which terminated in the year 1953 at Milwaukee Road stations east of Spokane where the Great Northern was an intermediate carrier and the Milwaukee Road was the terminating carrier. Examples of some of these movements would be a car originating on the S. P. and S., handled by the Great Northern to Minnesota Transfer and delivered to the Milwaukee there for ultimate de-
[fol. 2849] livery at Milwaukee, Wisconsin, Chicago, Illinois, Kansas City, Missouri, or any of their other stations. Primarily these movements are to the larger stations. There are nine hundred fifty-two cars in this traffic Group 3 eastbound and the comparable traffic in the reverse direction is two hundred fourteen cars in Traffic Group 8.

By Mr. Torinus:

Q. Those figures 952 and 214 appear on Page 2 of Exhibit 46?

A. All of the figures I read in connection with these traffic groups will be from Columns (c) and (f) on Page 2.

Mr. Maguire: Could I ask a question there for clarification too?

Mr. Torinus: Yes.

Mr. Maguire: Corresponding Group 8, which is your westbound traffic, you state that that is traffic originating at Milwaukee stations? In other words, the Milwaukee Road was the originating carrier?

The Witness: That is correct.

Mr. Maguire: In all phases in Group 8?

The Witness: In Groups 3 and 8 the test was that the Milwaukee either originated the traffic or terminated it.

By Mr. Torinus:

Q. All right. Groups 4 and 9?

A. Traffic Group 4 is traffic originating on S. P. and S. System which terminated in the year 1953 at stations east of Spokane common with the Milwaukee Road and other
[fol. 2850] roads, except the Great Northern and the North-

ern Pacific, where the Great Northern was the intermediate carrier but the Milwaukee Road was not the delivering carrier. An example of such a shipment as those shown on Page 1 would be a car originating on the S. P. and S. delivered to the Great Northern at Spokane, taken to Minnesota Transfer for delivery to the Northwestern System for furtherance and final delivery at Chicago, Illinois, or Burlington to Chicago, for example.

In this case the test was whether the Milwaukee served the delivering station as well as some other carrier other than the Great Northern or the Northern Pacific.

There were 2,194 cars in Group 4, and in the westbound group there were six hundred two cars.

Q. Now the next group?

A. Traffic Group 5 is traffic originating on the S. P. and S. System which terminated in the year 1953 at stations east of Spokane, not served by Great Northern, Northern Pacific or Milwaukee Road, where Great Northern was intermediate carrier.

Now, these stations are all located east of the so-called eastern boundary of the Mountain Pacific territory states, and examples of these destinations would be anywhere in official territory like Buffalo, New York, Cleveland, Ohio, the southeast like Atlanta, Georgia, southwest like Dallas, Texas, or Western Trunk Line territory—well, I am not sure Peoria is in Western Trunk Line.

[fol. 2851] A Voice: Yes.

A. Correct.

There were 15,701 cars in Traffic Group 5 and 5,897 cars in the comparable westbound Traffic Group 10.

In the analysis of Groups 5 and 10 it was necessary to further break down these cards after the information had been drawn from the abstracts. To do this we sorted these cards by states because—

By Mr. Torinus (interrupting):

Q. Well, Mr. Lear, if I might interrupt, I think you have told me that you made an investigation of the interline

abstracts and then you established these groups into these ten categories?

A. That is correct.

Q. Now, I don't think you explained the next step, which I understand you took, which was to draw the information off the abstracts onto cards?

A. I had forgotten that step.

Q. Will you go ahead and tell us what that procedure was?

A. Yes. After the traffic groups were selected the first thing we did was to draw the information from the abstracts off onto statement cards, one statement card for each abstract. The information drawn off on these cards showed the actual point of origin, the final destination, the originating road, the settling road, the month taken into and the Great Northern accounts, the oncoming and offgoing Great [fol. 2852] Northern junction, the road delivered to, the waybill date and number, the commodity class, the number of cars, the car number and initial, the weight of the shipment, the Great Northern revenue, the total freight charges, and the S. P. and S. revenue.

I might say that if more than one car or waybill was reported on an abstract the car number and the waybill number of only the first shipment reported on the abstract was shown and the balance was taken care of by increasing the car count to cover the others. The purpose of that was merely so that it could be identified with the abstract.

Q. After this information had all been drawn off on cards what was the next step, Mr. Lear?

A. The next step was to separate the Groups 5 and 10 by states. The reason for this was that we had to analyze the so-called border states of North Dakota, South Dakota, Kansas, Oklahoma and Texas that we had in our study because certain stations in the western parts of those states do not have routing at the present time via the so-called Missouri River junctions, Aberdeen, South Dakota, or Minnesota Transfer, and the cards were sorted on that basis. Cards to stations in the western parts of these states where no routing would be available to the Milwaukee were excluded from the study at this time.

Q. Well, so I can understand that, if you had a shipment

terminating, let's say, in the western part of South Dakota or Nebraska where there were no routes from Milwaukee [fol. 2853] stations in the Pacific Northwest like Seattle via Missouri River junction, are those the stations you excluded?

A. I used two tests in the exclusion. In the western parts of these states I checked the routing from the S. P. and S. via the Great Northern to see whether there were any routes via our eastern junctions. If there were not, that test was out. The other test I made was to see whether the Milwaukee from its own stations provided Missouri River routing to this area. If either one of the tests allowed the Missouri River junction routing the station was left in the study. If both of them were negative the cards were thrown out. And, as a matter of fact, most of western Nebraska, quite a little of western Kansas and some stations in Oklahoma, or in Texas, rather, were excluded on that basis.

Q. But if you had a station in that area where the Great Northern had routes via Laurel, Montana, for example, with the Burlington, and actually handled the traffic in connection with the S. P. and S. in the year 1953 and the Milwaukee had routes from its own territory via Missouri River junction, that station would be included?

A. That is correct.

Q. Traffic to that station would be included?

A. That is correct.

Q. All right, you may proceed, Mr. Lear.

A. After this the cards remaining in Groups 5 and 10 [fol. 2854] were only those cards on which Missouri River junction routing would be considered to be applicable to those stations.

The next step in the operation was the separation of each of the ten basic groups between competitive and non-competitive traffic, based on the present application of rates.

Competitive traffic, as used in this exhibit, is defined on Page 1, and I will read the definition. "Involved traffic, as defined above, which could presently move under equal rates from origin to destination in connection with the Milwaukee Road through its western junctions of Spokane or Marengo, Washington." The balance of the traffic is non-competitive.

I might add that this competitive traffic is on the basis from the origin station to the destination station and is now subject to Milwaukee solicitation under existing routes in the tariffs.

The final step after this was done was to sort the cards by I.C.C. commodity classes.

Q. You have finished with your general explanation and the explanation of the definitions on Page 1. Please turn to Page 2.

A. Page 2 is a grand summary of this exhibit and it shows the great volume of traffic that is involved in this proceeding. The Great Northern alone handled 27,292 cars of traffic, which will be subject to Milwaukee solicitation if they are successful in this case. This figure appears in Column (i) on the last line. These 27,292 cars are made up [fol. 2855] of 19,641 eastbound cars and 7,651 westbound cars. The 27,292 cars contained 887,134 tons of revenue freight. The revenue received by the Great Northern as their proportion of the total freight charges on these shipments is in excess of $11,000,000. To be exact, $11,202,-198.00. This figure appears in Column (k) on the last line on Page 2.

This figure in excess of the $11,000,000 represents the potential traffic loss that could accrue to the Great Northern in this proceeding.

Q. That is, which would be susceptible to Milwaukee solicitation, if they are successful in this case?

A. That is correct.

There is one other thing about this page that I would like to point out and that is that the predominating traffic group involved is Group 5 eastbound, which constitutes almost fifty per cent of the total revenue, being $5,585,688 of Great Northern revenue out of the $11,000,000 total.

Q. Does that complete your explanation of Page 2?

A. Yes.

Q. Now, will you please turn to Page 3.

A. Page 3 is another recap of the following pages, reaching the same totals as shown on Page 2, but it has this important difference, it breaks down the traffic groups between competitive and non-competitive traffic, as I have defined them previously.

[fol. 2856] The competitive traffic of 15,084 cars shown on the last line in Column (b) represents 55 per cent of the total cars, 27,292 in Column (l). Now, this competitive feature is not uniform by direction. On the eastbound traffic there are only 8,347 cars that are competitive out of a total of 19,641 cars or 42 per cent, whereas on the westbound traffic 6,737 cars are competitive out of the total of 7,651 cars or 88 per cent.

The primary reason for this difference is the lack of restrictions via the Marengo gateway on the westbound traffic.

This page also shows two other features which are not contained on Page 2. It shows the total amount of freight charges in columns (d), (i), and (n), and the S. P. and S. proportions of the revenue in Columns (f), (k), and (p).

Q. So that there may be no misunderstanding about these terms competitive and non-competitive as you have used them in this exhibit, does the term "competitive traffic" embrace traffic which might move from origin to destination via any competitive route at equal rates or just traffic which might move from origin to destination via a competitive route in connection with the Milwaukee according to its long-haul from the western junctions of Spokane and Marengo?

A. The latter is correct. The only competitive test was whether or not the Milwaukee could secure their long-haul through western junctions on this traffic. If they could not, [fol. 2857] the mere fact that other routes existed was not considered and the car was classed as non-competitive.

Q. So that, for example, on a carload of lumber originating at Eugene, which would be handled Oregon Electric, Portland, S. P. and S. Spokane, Great Northern, Minnesota Transfer, Northwestern, Chicago, let's say, for final termination some place in the southeast, for example, Atlanta, Georgia, if I understand your statement correctly that car would be classified as non-competitive in this exhibit because it is not susceptible to handling over the Milwaukee via the Marengo gateway even though a competitive route might exist from Eugene to the same destination in connection with the Southern Pacific, Union Pacific, through Council Bluffs, is that correct?

A. That is correct. That car would be classified as non-competitive.

Q. Do you have any further explanation with respect to Page 3, Mr. Lear?

A. No.

Q. All right. You may proceed.

A. I would like to call your attention to the two principal movements involved in my exhibit. The first is on Page 10, which is the Group 5, Products of Forests, at the bottom of the page. It can readily be seen the importance of this group in the total picture. There are 13,130 cars in this group, this Products of Forests, out of a grand total of [fol. 2858]. 27,292 cars in the entire exhibit. This traffic, therefore, constitutes 48 per cent of all the cars included. On a weight basis there are 443,817 tons in this group, out of a total of 887,134 or 50 per cent of the total.

On the Great Northern revenue basis, the Great Northern proportion is $4,489,112 out of the total of $11,202,198 or 40 per cent of the total.

All of these figures show the importance in this proceeding of this particular group of commodities.

I might also call attention to the fact that there are 4,603 of these cars that are classified as competitive as against 8,527 cars non-competitive or, in other words, 35 per cent of the total cars in this group are now competitive. Now, this is contrasted with all of the traffic included on the exhibit, which is roughly 55 per cent competitive under existing rates and routes.

The other group that I wish to call your attention to is the Manufacturers and Miscellaneous in Group 10, beginning on Page 20 of my exhibit. The totals for this group appear on the next to the last line on Page 22.

This is the most important group of westbound traffic involved. There are 4,621 cars out of the total westbound traffic of 7,651 cars. The situation on this traffic, however, as far as competitive feature goes, is remarkably different. 4,237 of these cars are competitive out of a total of 4,621, or [fol. 2859] 92 per cent, again reflecting the differences in the restrictions by direction through the Marengo route.

I believe the balance of my exhibit is merely supporting detail and is self-explanatory.

Q. Mr. Lear, I would like to ask you a couple of additional questions with respect to those interline abstracts from which you prepared the cars which you spoke of earlier in your testimony. Are those interline abstracts from which you took this basic data regular railroad accounting records kept in the regular course of business?

A. That is correct.

Q. On an interline shipment, with respect to which an interline abstract is prepared, do each of the participating carriers receive duplicates of the interline abstract?

A. All of the main carriers receive a copy of the interline abstract covering the movement. Some short lines with junction settlements would not.

Q. After you examined these interline abstracts and the records of the Great Northern Railway Company and drawn out certain information on these cards which you have described, did you furnish certain information taken from the interline abstracts to the Chicago & Northwestern Railway Company, The Chicago, Burlington & Quincy Railroad Company, to the M. & St. L. and to the Chicago, Rock Island and Pacific Railroads in response to requests from those lines?

[fol. 2860] A. Yes, I did.

Q. What was the nature of the information that you furnished to these other lines?

A. I furnished these other lines the cards in which they were involved as participating carriers. Perhaps I had better elaborate on that a little. What I did was to go back to the original record, the interline abstract in the Great Northern accounts and compared the card we had drawn with the original record. When I did that, if any of these four lines participated in the—incidentally, the Omaha was included as well with the Northwestern—if any of these lines participated in the movement their revenue was shown on the same abstract from which I drew my information.

Q. And do you know, Mr. Lear, from your accounting experience whether those lines would have copies of that same abstract?

A. Yes, they would.

Q. All right. You may proceed.

A. I had the revenue received by each of these Western Trunk Lines added to the bottom of the cards from which my study was made. After the revenues were all added to the cards in which these carriers were involved the cards were then sorted by the four lines, the Northwestern System, The Burlington, The M. & St. L., and the Rock Island, and we found a few cases where two of these Western Trunk Lines had participated in the same movement. At that time we drew dummy cards, one, for [fol. 2861] example, if it was a movement between The M. & St. L. and the Northwestern we drew a dummy card for the Northwestern portion of the revenue and another card for The M. & St. L. portion. These cards were then sorted by the handling Western Trunk Line carrier and I turned the cards over to the lawyers of those companies who had requested the information.

Mr. Torinus: Mr. Examiner, this testimony on direct completes a phase of our accounting testimony, which is preliminary to some further testimony that will be offered by other witnesses. I would like the privilege of recalling Mr. Lear with reference to some unrelated subjects at a later stage of this hearing. This completes his testimony with respect to this subject, and, as I say, there will be some witnesses who will follow whose testimony logically follows this presentation and who will refer to this material covered by Mr. Lear.

That completes my direct examination of this phase of Mr. Lear's testimony.

Exam. Dishman: Is the witness now tendered for cross-examination?

Mr. Torinus: Yes, sir.

Cross-examination.

By Mr. Maguire:

Q. I just want to get at your method a little further, as to your method of computing or determining whether traffic was competitive or non-competitive. Now, let's pick an example to see whether my understanding of your method is [fol. 2862] correct. If you have a shipment which originates

at, let us say, Eugene on the Oregon Electric and goes Oregon Electric, S. P. and S., to Spokane, thence Great Northern to Minnesota Transfer, thence, let us say, Chicago Northwestern to Milwaukee, you call that competitive, that is, if there is a parity of rates between the actual route of movement and a similar movement via Southern Pacific to Portland, Union Pacific, Marengo, Milwaukee Road to Milwaukee, Wisconsin, is that my understanding of it?

A. That is right.

Q. In determining, however, particularly on lumber shipments, did you take into consideration whether the traffic would be competitive over the actual route of movement as compared to the theoretical route of movement via the Southern Pacific, by the route which it didn't go as a matter of fact? Did you take into consideration the differences, if any, in transit privileges in order to determine whether those two routes were truly competitive?

A. Well, I don't know as I quite understand your question, Mr. Maguire. Are you asking me if I took into consideration transit privileges that were actually used or theoretical transit privileges?

Q. Transit privileges that were available via the respective routes, did you make any comparison?

A. Only such transit as actually was available on [fol. 2863] particular movements was all the transit that was considered. Does that answer what you want to know?

Mr. Torinus: Actually availed out, is that your answer?

The Witness: That is correct.

By Mr. Maguire:

Q. In other words, if you had transit, let us say, at Portland on an eastbound lumber shipment which was actually available by the shipper, did you then consider whether or not transit was available via the Southern Pacific, Union Pacific, Marengo route?

A. No, I did not.

Q. Then the only consideration you gave to transit was nothing, wasn't it, you didn't given any consideration to it?

A. Perhaps those answers are a little confusing. Let me explain. When I considered the transit feature, according

to my definition of competitive traffic, I considered competitive traffic to be equal rates from point of origin to final destination. Of course the waybill is made at the transit point, and I reconstructed the theoretical move. Does that explain?

Q. Yes, I think it does. In other words, you did not take into consideration in determining whether a route or where the two routes were actually competitive, you did not take into consideration the existence of transit privileges via one route and the possible lack of privileges via another, that was not considered by you at all?

A. On the lumber that is correct.

[fol. 2864] Q. Then, as a matter of fact, you didn't consider the relative availability of transit on any other commodity, did you?

A. Yes, I did.

Q. Which ones?

A. I checked that very carefully on the westbound commodities, and I checked the origins on the transit very carefully on the eastbound commodities.

Q. That was to determine—that is, you checked them very carefully in order to reconstruct your through rate?

A. No, I actually reconstructed most of the westbound trans actual movement through the transit station as such. I did not do that on the eastbound lumber, except from point of origin to final destination.

Q. What was the purpose of your reconstructing most of the westbound transit actual movement through the transit station as such? Was it to determine the rate that was charged?

A. That is correct.

Q. Then we get right back to the same thing again on both eastbound and westbound business and regardless of commodity that in determining whether two routes were actually competitive or not you did not take into consideration whether transit privileges might be available at all points on one route where they would not be available at all points on the other, did you?

A. To the extent that transit was availed on these eastbound lumber shipments I agree with you.

[fol. 2865] Q. You say you agree with me?

A. Yes, sir.

Q. And also to the extent that transit may or may not have been availed of in connection with any particular movement, you just looked at the rate level of the respective routes to determine whether the rate levels were the same and did not take into consideration whether transit was equally available or transit privileges in general were equally available over those two routes?

A. Mr. Maguire, I certainly didn't take into consideration that there may have been a transit privilege at some off-line point or anything like that that was not used in these shipments.

Q. Now, Mr. Lear, let's get down to brass tacks on this. You know on eastbound lumber shipments via Marengo, S. P. and S., Marengo, then Milwaukee, that the Union Pacific does not allow transit on their lines?

A. On the portion of the haul that is on their lines, that is correct.

Q. Whereas, on a shipment where Oregon Electric, S. P. and S., and one of the Northern lines beyond Spokane transit is allowed at any place on the Oregon Electric and the S. P. and S.?

A. Providing it comes within the tariffs, the out of line haul distance, that is right.

Q. But you did not in determining competitive routes or [fol. 2866] competitive traffic, you did not take into consideration the lack of transit on the portions of the through route covered by the S. P. or the Union Pacific as contrasted with the existence of this privilege on the Oregon Electric and the S. P. and S., did you?

A. I certainly didn't consider any transit on a car that wasn't transited, no, sir.

Q. Now, now, now, you know what I am talking about.

A. I know, and I did not consider it on the ones that were, as I said previously.

Q. In other words, the existence, relative existence or non-relative existence of transit, had no effect on the competitive nature of the routes so far as you are concerned?

A. That is correct.

Q. You used just the one standard, which was equality of rates?

A. On the eastbound traffic, that is correct.

Q. Also you decided whether a route was competitive, whether or not only on equality of rates, on your westbound traffic, did you not?

A. No. As I told you, on certain items of westbound traffic I actually reconstructed it through the transit station. If the transit could not move as outbound on the Milwaukee, it is classified as non-competitive.

My answers have been limited to the eastbound lumber, which I admit I did not do, but on the westbound, grain products and so forth, I checked every one of those.

[fol. 2867] Q. So westbound did you not consider a route competitive, the Milwaukee route competitive, unless a shipper over the Milwaukee route had the same transit privileges as he would over your—

A. (Interrupting) Had available the same transit privilege that was availed of on this particular shipment via the Milwaukee route, that is correct.

Q. Oh, I see, there is a further refinement, then. You took into consideration the relative availability of transit on westbound distance where only in the case of your actual shipments that you surveyed here there was transit actually availed of over the route in which the Great Northern participated?

A. Well, perhaps I can make it clearer, Mr. Maguire, by using a hypothetical example.

Q. I wonder, Mr. Lear, would it be too difficult for you to answer my question?

A. Well, I frankly just don't quite understand it.

Mr. Maguire: Read the question, please.

(Question read.)

A. That is correct.

By Mr. Maguire:

Q. However, upon the balance of the westbound shipments, unless transit privilege was actually availed of over the actual movement, you did not take into consideration the availability, relative availability, of transit?

A. Oh, no.

[fol. 2868] Q. And what percentage of the eastbound lumber business is the competitive lumber, forest lumber?

A. This is only the Group 5 eastbound; I worked it out, it is 35 per cent competitive.

Q. Well, the rest of it is a matter of mathematics?

A. That is right.

Q. Now, in determining whether traffic was competitive or not a very large proportion of your eastbound lumber and forest products shipments are so-called transit cars, that is, cars which are sold in transit, are they not?

A. I don't know what the percentage is.

Q. I didn't ask you for the exact percentage. A substantial portion of them are? You have heard all the testimony here?

A. I know there are transit cars.

Q. And you know there are a substantial number of them too, don't you?

A. I prefer not to say as to that, I don't know that.

Q. You have been quite a faithful attendant at these hearings?

A. That isn't the point. I have never compared the number of the transit car operators that have testified.

Q. I say there is a substantial amount of business moving in so-called transit cars?

A. Yes.

Q. And as to those transit cars which have been defined earlier in this proceeding a number of times, even though [fol. 2869] there is an equality of rates over two different routes, are those routes competitive if a transit dealer over one of the routes can divert to connections of the carrier serving that route and over the other route cannot divert and still protect the through rate to connections of the other carrier?

Mr. Torinus: Mr. Maguire, before that question is answered I'd like to have you define for this witness what you mean by a transit car.

Mr. Maguire: I think the witness can certainly take care of himself, and if that's an objection I wish you would state it.

Mr. Torinus: It's an objection.

Mr. Maguire: What is the ground of the objection?

Exam. Dishman: Does the witness understand what is meant by transit car?

The Witness: I understand that they mean so-called roller car.

Mr. Maguire: Yes. I don't think he needs any help.

Mr. Torinus: I'd like to understand the question.

Mr. Maguire: I am talking to the witness.

If you can't understand you might talk to your colleagues and find out about it. I think you do.

Mr. Torinus: By roller car do you mean simply a car that is shipped out unsold or do you mean a car that is shipped out unsold that moves in slow service or over a circuitous route?

[fol. 2870] Mr. Maguire: I am talking about transit cars, cars which are sold while they are in transit. That is the definition I gave this witness. Now, I am not going to define it any further.

Mr. Torinus: I understand it now. If that's your definition, a car that is sold en route, regardless of whether it moves fast or slow or on a circuitous route or otherwise.

Mr. Maguire: I have given my definition and I am not going to argue about it. If you have an objection please state it, otherwise please stop interfering with me, please.

Exam. Dishman: In your answer, Mr. Witness—you might answer.

Mr. Torinus: I think you may proceed, Mr. Maguire. I think you have clarified the term.

Mr. Maguire: Thank you.

Can I proceed undisturbed now?

The Witness: Will you read the question again, please?

(The question was read as follows:

"Q. And as to those transit cars which have been defined earlier in this proceeding a number of times, even though there is an equality of rates over two different routes, are those routes competitive if a transit dealer over one of the routes can divert to connections of the carrier serving that route and over the other route cannot divert

and still protect the through rate to connections of the other carrier?")

[fol. 2871] By Mr. Maguire:

Q. Are those routes truly competitive?

Mr. Torinus: Do you understand the question? Do you, Mr. Lear?

Mr. Maguire: If he doesn't understand it he will say so. I wish you would stop interrupting.

Mr. Torinus: He has said so.

Exam. Dishman: Gentlemen, does the witness understand the question?

A. In the first place you are asking me to substitute my judgment for the lumberman. If you are willing to take it on that basis I will answer it.

By Mr. Maguire:

Q. I am asking you to explain the philosophy used by you in determining whether a rate is competitive or non-competitive.

A. I said there had to be equal rates from point of origin to destination.

Q. In other words, you regarded routes as competitive even though a shipper of lumber who was a transit dealer, as that term has been defined, would have broad areas of distribution over the connections of the Great Northern, for example, on the one hand, and would find himself in a pocket at local points of the Milwaukee on the other, that was still a competitive movement so far as you are concerned?

A. Mr. Maguire, the answer to that question is yes, but this is the traffic the Great Northern handled and I have [fol. 2872] no way of knowing whether it included transit cars or not and that is the traffic which I am classifying as competitive or non-competitive.

Q. I think you have answered my question, thank you, Mr. Lear.

In what group as to origins and destinations would a shipment westbound originating in Sioux City, Iowa, be placed?

A. If the Great Northern originated it, it would be in Group 6, a station common with the Milwaukee. If the Milwaukee originated it and gave it to us somewhere in the midwest it would be in Group 8. If the Northwestern or the Illinois Central or any other midwestern road originated it at Sioux City, it would be in Group 9.

Q. Now, let's take, if this was one that originated on the Great Northern, the Great Northern serves Sioux City?

A. Correct.

Q. If it originated at the Great Northern and went via Great Northern to Spokane and there delivered to the S. P. and S. to an ultimate destination on the S. P. and S. System, that would be in Group 6, then, wouldn't it?

A. That is correct.

Q. Did you take into consideration as to westbound movements of corn which had moved into Sioux City under transit privileges shipped out as to whether or not via the Great Northern, S. P. and S. routes, there were greater credits given to the shipper for the inbound movement to the transit station than would be available via the Mil-
[fol. 2873] waukee-Union Pacific route, did you take that into consideration?

A. Yes, sir, I did.

Q. In other words, you know there is a, I think, six or six and a half per cent differential?

A. Six cents.

Q. Six cents, yes. And where the drawback to the shipper, then, who shipped out of the transit station would amount to a greater credit or drawback via the Great Northern route than it would via the Milwaukee route, you did not regard that as a competitive circumstance?

A. That is right. If the total credit from country freight to ultimate destination were different, it was non-competitive.

Mr. Torinus: That is, it is in the study—

The Witness (interrupting): It is in the study but it is classified as non-competitive.

By Mr. Maguire:

Q. That is what I wanted to get at.

A. Yes.

Q. So it is only where there is a difference in rates in any manner connected with transit privileges or the absence of transit privileges that you took into consideration the relative transit privileges, isn't it?

A. Well, this was a peculiar situation because actually some of them moved in combinations and some moved in transit. I had to check out each one in order to find the [fol. 2874] charges, but that is true, it is from initial point of origin to final destination.

Mr. Maguire: Mr. Lear will be in attendance the rest of the hearing, will he not?

Mr. Torinus: He will be in attendance throughout the hearing. I suggest, though, that you complete your cross-examination on this exhibit at this time.

Mr. Maguire: Mr. Examiner, there has been given to us on very short notice, as a matter of fact just before the noon recess, a twenty-two page exhibit containing hundreds, if not thousands, of figures and computations, not computations, figures, and I wish to examine it further. I think I am through with cross-examination but I would like—I will examine this expeditiously when I can do so—I would like to have the privilege of cross-examining Mr. Lear further upon Exhibit 46 if I so request.

Exam. Dishman: I see no objection since Mr. Lear will be in attendance at the hearing in view of the size of the exhibit.

Mr. Torinus: I have no serious objection to that. What I really wanted to be sure of is whether or not Mr. Maguire intended to cross-examine further on the exhibit, and if you wish to reserve that right, I have no objection.

Mr. Maguire: I don't believe I will but there are some of my associates present who are more familiar with some of the questions raised here than I am, and I would like to have their counsel before I do definitely close off the [fol. 2875] cross-examination. However, I will say at this time that I have no objection whatever if counsel wants to offer this exhibit even though cross-examination may not be technically completed.

Exam. Dishman: Do you desire to offer the exhibit now?

Mr. Torinus: I have one or two questions on redirect if you are through with this phase of your cross.

Mr. Maguire: Yes, I am.

Redirect examination.

By Mr. Torinus:

Q. Mr. Lear, I would just like to ask you several questions about this matter of transit that Mr. Maguire brought up on cross-examination. Take eastbound shipments first. Were you able to determine from an examination of the interline settlements whether or not transit was accorded on eastbound shipments?

A. That is true.

Q. You were able to determine whether transit was accorded on eastbound shipments?

A. If the transit took place on the S. P. and S. System I was.

Q. If it took place on the Great Northern were you able to determine?

A. If it took place on the Great Northern the cars are not in the study at all.

Q. And that is because, as I understand it, transit balances are settled through claim channels rather than interline settlements, isn't that correct?

[fol. 2876] A. Well, that is correct in some cases but this was made on a basis at the point of the shipment, if it was transited at a Great Northern station, say Sand Point, Idaho, for example, it would show Sand Point, Idaho, as the origin and whatever the final destination would be, and while it would refer to the fact, if the transit came off the S. P. and S. on the abstract, which is the way I reconstructed it from the abstract of those that were transited on the S. P. and S., I made no attempt to pick up cars that were transited on any Great Northern station on eastbound.

Q. So that those cars are not in the study at all?

A. That is correct.

Q. Mr. Maguire asked you some questions about transit on westbound commodities and he spoke particularly of Sioux City and the difference in the so-called drawback with respect to the corn rate adjustment. Do you have any further explanation with respect to your treatment of corn which you would like to give?

A. Well, I would like to tell a little more about the corn story. I analyzed it pretty carefully. In all of the groups that we have, all of the cars of corn we had in this period, it amounted to 381 that are included in this study. Now, that is made up of all of the westbound groups and I have classified those on a most conservative basis, which is the movement from country point through the actual transit station used to the final destination; and of this 381 sixty-three could have moved over the Milwaukee long-haul routes with exactly the same transit privileges as [fol. 2877] moved over the Great Northern routes to the same destination from the same origin.

Q. And those sixty-three cars were classified how?

A. They are classified as competitive on pages 13 and on. Of the balance of the cars, there were only five of all the cars of corn that went to a destination that the Milwaukee could not serve through the Marengo route. And if you considered the transit point the origin point all but these five would have been competitive, and in many cases, by looking at the transit that was actually surrendered, it might have been possible to surrender other transit to make some of those cars competitive on the same basis instead of the transit that were surrendered. In some cases cars were transited at Minneapolis, for example, where if they had been transited at Sioux City, some other station, they would have been competitive, due to the difference in inbound rates. The Milwaukee only allows nineteen and a half cents inbound on their corn shipments without penalty to Union Pacific or Southern Pacific stations whereas the Great Northern allows a twenty-five and a half cent inbound rate when destined S. P. and S. stations. If I had stuck strictly to the definition of competitive traffic, as shown on my exhibit, without paying any attention to the actual transit station used, two hundred eighty-four of this three hundred eighty-one

cars could have been classified as competitive, but I took the most conservative approach and just showed sixty-three.

[fol. 2878] Q. And those sixty-three cars, as I understand it, which are the only cars shown as competitive in your study, they are cars which actually moved via the transit station through which a rate applied from point of origin to destination on the same basis as the through rate with transit actually assessed, is that right?

A. Well, as the through charge actually assessed, yes. Some of them moved at combination rates, that's the point.

Mr. Torinus: I have no further questions, Mr. Lear.

Mr. Maguire: I have just a couple, if I may.

Recross examination.

By Mr. Maguire:

Q. I think maybe you misspoke yourself, Mr. Lear, when you stated that the Milwaukee only allows a nineteen and a half cent drawback on corn over the Marengo route.

A. What I meant to say is the Milwaukee tariffs allow so much. Who applies the restriction I have no way of knowing.

Q. Yes, because do you not know as a matter of fact under the tariff, under the routing, rather, Milwaukee to Terry, Montana, that is Northern Pacific, the twenty-five and a half cent drawback applies?

A. Well, being restricted to Great Northern I didn't check that one, whether it did or did not apply. I know the route exists.

Q. You may not have been listening at the time that testimony was given because there has been a lot of testimony—

Exam. Dishman (interrupting): Will the witness ex-[fol. 2879] plain at this time for the benefit of the record what you understand by the term "drawback"?

The Witness: What I understand is that the through rate from country point to final destination is made up

of the inbound rates or a portion thereof and the balance to make up the through rate. Drawback to me means the amount of inbound rate that will be applied against the outbound shipment.

Further redirect examination.

By Mr. Torinus:

Q. For example, Mr. Lear, on a shipment of corn originating at a country station moving into Sioux City, that's from Sioux City to a destination on the Pacific Coast, can you give a typical example of how the different drawbacks would apply?

A. Well, I will see if my arithmetic is right here. The through rate on corn is eighty-six and a half cents from country point to final destination. If the inbound rate on the Great Northern is twenty-five and a half cents or less—

Q. (Interrupting) That would be the inbound rate from some point—

A. (Interrupting) In the country.

Q. (Continuing) —in the country to Sioux City?

A. To Sioux City. The shipment will be billed out at the balance or sixty-one cents.

In the case of the Milwaukee route the arithmetic is eighty-six and a half less nineteen and a half or sixty-[fol. 2880] seven cents. A nineteen and a half cent inbound rate, however, would produce a sixty-seven cent balance by either route.

Mr. Maguire: I had not quite finished with Mr. Lear. Are you through now?

Mr. Torinus: No, sir.

By Mr. Torinus:

Q. Nineteen and a half cents is the maximum drawback allowed under the Milwaukee tariff in connection with corn moving via the Marengo route whereas twenty-five and a half cents is the maximum drawback in connection with corn moving via the Great Northern, thence S. P.

and S. to destinations on the S. P. and S. and the Oregon Electric and Oregon Trunk, is that right?

A. That is right.

Mr. Torinus: I have no further questions of Mr. Lear.

Mr. Maguire: I just have one very general question about your entire exhibit.

Further recross examination.

By Mr. Maguire:

Q. I think you may have stated this but I just want to be sure that it is in the record, that what you characterize as non-competitive traffic is traffic which would be available to solicitation by the Milwaukee in case the prayer of its client were granted here, but which is not now available due to the absence of rates?

A. Or unequal rates.

Q. Or unequal rates?

[fol. 2881] A. That is correct.

Mr. Torinus: Not now available in connection with movement via the S. P. and S. and the Milwaukee, is that right?

Mr. Maguire: That is what the exhibit is about.

By Mr. Maguire:

Q. As a matter of fact, it is not available at equal rates over any route, is it?

Mr. Torinus. Just a minute, Mr. Maguire. I don't think he answered my question.

The Witness: I didn't quite get the question.

Mr. Torinus: Well, it refers back to Mr. Maguire's question which was, as I recall it, what your understanding was of the traffic, total traffic, susceptible to Milwaukee solicitation should they be successful in this case.

The Witness: No. The total traffic susceptible to Milwaukee solicitation would be the twenty-seven thousand cars and the $11,000,000. He asked me, as I understood it, whether the traffic that they can not solicit now on any basis would not be the twelve thousand two hundred eight non-competitive cars and the $4,358,449.

Mr. Torinus: You are reading from what page?
The Witness: Page 3.
Mr. Torinus: I think that is clear, Mr. Lear, thank you.

By Mr. Maguire:

Q. In other words, by no route, regardless of the presence or absence of transit privileges, on no parity of rates can the Milwaukee solicit this 12,208 cars which are shown [fol. 2882] at the bottom of Page 3?
A. Not via their long-haul route.
Q. Yes.
A. That is right.
Q. And as to the remaining fifteen thousand, that is based solely on a comparison of parity of rates without any consideration of other features which would affect the competitive abilities of the two railroads?
A. With the exception of corn and other grain products that I mentioned, that is correct.

Mr. Maguire: That is all, thank you, subject to further cross-examination.

Offer in Evidence

Mr. Torinus: At this time I would like to offer in evidence Exhibit 46.
Mr. Maguire: No objection.
Exam. Dishman: Exhibit 46 is received in evidence.

(Defendant's Exhibit No. 46, Witness Lear, was received in evidence.)

Exam. Dishman: Will you know by tomorrow, Mr. Maguire, whether or not you want further cross examination respecting this exhibit?
Mr. Maguire: Oh, yes, I will know that. As a matter of fact, for convenience, I don't like to interfere with the orderly presentation of anyone's case, even my opponent's, so I will be glad, if we desire to cross-examine further, to examine Mr. Lear at any time that is convenient to counsel.
[fol. 2883] Mr. Torinus: Thank you, Mr. Maguire.
Exam. Dishman: The witness is excused.

(Witness excused.)

Exam. Dishman: We will take a short recess.

(Short recess.)

Exam. Dishman: The hearing will come to order, gentlemen.

Mr. Golden: May we have the exhibit marked for identification, please?

Exam. Dishman: It will be Exhibit No. 47.

(Defendant's Exhibit No. 47, Witness Webb, was marked for identification.)

WALTER J. WEBB was sworn and testified as follows:

Direct examination.

By Mr. Golden:

Q. Would you state your name, residence and occupation?

A. Walter J. Webb, St. Paul, Minnesota, assistant auditor to freight accountant, Northern Pacific Railroad.

Q. Would you state briefly your railroad experience?

A. Well, I was employed by the Northern Pacific Railroad in January 1919, and from that date until 1946 I had various clerical positions dealing with the revision and preparation of interline accounts. From April 1946 until April 1948 I was special accountant. From April 1948 until August 1953 I was chief clerk. From then to the present I am assistant auditor of freight accounts.

[fol. 2884] Exam. Dishman: What is your present position?

The Witness: Assistant auditor of freight accounts.

By Mr. Golden:

Q. Was the instrument which you have before you, which is marked for identification as Exhibit No. 47, prepared under your supervision and direction?

A. It was.

Q. Would you please explain what it is?

A. Well, it is a compilation of data from the interline received, or the interline abstracts of the Northern Pacific interline accounts, and it is an analysis of the carload traffic interchanged between the Northern Pacific and S. P. and S. at Pasco or Spokane, subject to the following limitations, it covers only traffic which originated or terminated on the S. P. and S. on one hand and which originated or terminated east of Spokane, which would be subject to solicitation by the Milwaukee if they were successful in this case.

Q. East of Spokane, would that be stations which are on the Northern Pacific or its connections?

A. Yes, Northern Pacific or its connections.

Q. And what year's interline accounts did you use?

A. The year of 1953.

Q. Would you proceed, then, with your explanation as to what the exhibit is?

A. Well, the exhibit is divided into ten groups. Groups 1 to 5 cover eastbound traffic and Groups 6 to 10 cover [fol. 2885] westbound traffic. The traffic assigned to each group is indicated in the headings preceding each group. It is also divided or compiled to show the I. C. C. classification commodity order, and it is further separated by competitive and non-competitive traffic.

The term "competitive traffic", as used in this connection, includes all traffic on which through routes at equal rates are presently available to Milwaukee via S. P. and S., Spokane, or by U. P., Marengo. Non-competitive traffic is traffic on which such through routes at equal rates are not now presently available via Marengo or Spokane.

Q. When you use Marengo would that also include Plummer, Idaho?

A. I believe it would. It is an alternate junction there.

Q. Would your definition indicate that the traffic which you have classified non-competitive is not competitive via any other route?

A. No. That traffic could possibly move through the Missouri River gateways or via other routes than Spokane or Marengo.

Q. Would any substantial amount of it be competitive so far as the shipper is concerned?

A. Oh, yes, most of it would be competitive so far as the shipper or the Northern Pacific is concerned.

Q. You heard the testimony of Mr. Lear in connection with his exhibit No. 46?

A. Yes, I did.

Q. Did you prepare your exhibit in the same manner in [fol. 2886] which he prepared his?

A. Yes, it is practically identical except we have the additional eastern junction at Pasco, Washington.

Q. Which you included?

A. We also include ! traffic via Pasco.

Q. What is the purpose of your Exhibit No. 47?

A. Well, the purpose is to show the approximate potential S. P. and S. traffic now interchanged with the N.P. at Spokane or Pasco in terms of both car, carloads and dollars, which would be susceptible to the loss by the N.P. if the Milwaukee prevails in this case.

Q. And what is the volume of this traffic?

A. The volume of this traffic in terms of cars is 26,631 cars, 868,338 tons, and $10,757,217.42. These figures are conservative. They don't include all the traffic that the S. P. and S. and N.P. might interchange.

Q. This data which you just gave us, on what page is that shown?

A. That is shown on Page 2.

Q. Mr. Webb, in view of the similarity of the makeup and the method in which you prepared your exhibit with that of Mr. Lear I am not going to ask you to go through and explain what it is page by page unless you have some comment as to some item which you feel should be explained.

A. Well, Mr. Lear went into the corn situation.

Q. Would you state how you treated the corn?

[fol. 2887] A. We treated the corn in the same way that Mr. Lear did, except that where he has Sioux City in Group 1, it appears in a different group in our studies, Group 8 and 9.

Q. Where is the corn shown in your exhibit?

A. The corn is shown in Groups 8, 9, and 10.

Q. On what pages would that be?

A. Groups 6, 8, 9 and 10 on Page 10, 12, 13 and 15.

Q. Would you take the cars that are shown in those separate groups and show just how you treated them in your separation between competitive and non-competitive?

A. Well, generally speaking, any corn which had an inbound rate of nineteen and a half cents or more was classified as non-competitive, and because of the fact the restrictions placed on the Marengo route in the tariffs.

Q. How many do you have classified as competitive?

A. We have seventy-five competitive cars.

Q. And how many non-competitive?

A. Three hundred seventy-four. Of course, of those non-competitive cars some of them were classified non-competitive because they came from transit stations such as Sleepy Eye, Minnesota, and Marshall, Minnesota, which are located on the Northwestern Railway for which there are no through rates published in connection with Milwaukee to Portland.

Q. How many cars in that category?

A. There were fifty-two cars in that category. There [fol. 2888] were eleven others that went to local points on the S. P. and S. Those were also in the non-competitive group. That is out of the three hundred seventy-four.

Q. Did you likewise have a request from certain of the defendants in this case to furnish them with some information, namely, the Chicago, Burlington & Quincy, The Minneapolis & St. Louis, Chicago & Northwestern, the Omaha and the Rock Island Railroads?

A. Yes, we did.

Q. What was the information requested?

A. Well, they asked for the origin, destination, commodity, cars, tons and revenue accruing to their line.

Q. Did you furnish the information?

A. Which was included in this exhibit. We did furnish the exhibit, we furnished the cards.

Q. I beg your pardon?

A. We furnished them with cards.

Q. From what source did you obtain that information?

A. Well, we obtained the information from the abstracts of our interline accounts, and we drew that off on cards showing the revenue of these Western Trunk Lines mentioned here.

Q. For what periods?

A. For the period of—we made a four-month study from the period of February, May, August and November of 1953.

Mr. Golden: Mr. Examiner, that is all I have on direct from this witness in connection with this exhibit. Like [fol. 2889] Mr. Lear, he has some further information which is not related to this particular subject matter which we would like to present at a later time. This information is also being put in the record at this time as a basis for testimony which will be presented by other witnesses.

Exam. Dishman: Do you tender the witness now for cross-examination?

Mr. Golden: Yes, sir.

Cross examination.

By Mr. Maguire:

Q. Mr. Webb, there is just one difference, as I see it, in your classification, that is, one difference between your study and your basis and Mr. Lear's basis, with respect to the definition of competitive traffic, and it may have been that I misunderstood you about that.

A. The definition in full is contained on Page 1 of the exhibit.

Q. Yes.

A. And my definition was that the term "competitive traffic", as used in this connection, includes all traffic on which through routes at equal rates are presently available to the Milwaukee via the S. P. and S., Spokane, or Marengo.

Q. Yes, but it may have been I misunderstood your explanation to Mr. Golden. You made some comment as to traffic moving through the Missouri River gateways, through Council Bluffs, for example, Union Pacific to Council Bluffs, is the way I understood it. I may have misunderstood it. What is your definition on that?

[fol. 2890] A. Our definition of competitive traffic here is confined to the competition via Spokane, Marengo, that

there would be other traffic that is competitive so far as the N.P. is concerned that might move through Missouri River gateways.

Q. But it might not be competitive so far as the N.P. and Milwaukee Railroads are concerned via Spokane, N.P., or the Milwaukee, as the case may be?

A. No.

Q. You heard my cross-examination of Mr. Lear, did you not?

A. Yes, sir.

Q. And if I should ask you the same questions would you make the same answers as to the manners in which you arrived at various conclusions stated in your exhibit?

A. Yes, that would be true.

Q. And would you embrace in that answer all of his answers to cross-examination?

A. As far as I understood them, yes.

Q. Are you willing to adopt his answers on cross-examination?

A. Yes.

Mr. Maguire: That is all. Thank you, Mr. Webb.

I would like to make the same request, that we be allowed an opportunity overnight to examine Mr. Webb's exhibit, the same request as I made of Mr. Lear.

Mr. James: I would like to ask Mr. Webb, you said you [fol. 2891] supplied the other railroads with the cards. Were they the cards or photostatic copies?

The Witness: Photostatic copies of the cards.

OFFER IN EVIDENCE

Mr. Golden: We offer Exhibit No. 47.

Mr. Maguire: We have no objection.

Exam. Dishman: Exhibit No. 47 is received in evidence.

(Defendant's Exhibit No. 47, Witness Webb, was received in evidence.)

Exam. Dishman: The witness is excused.

(Witness excused.)

Mr. Maguire: Could I ask just one question off the record?

(Discussion off the record.)

Exam. Dishman: On the record.

Mr. Torinus: I will call Mr. Finley to the stand.

C. E. FINLEY was sworn and testified as follows:

Direct examination.

By Mr. Torinus:

Q. Mr. Finley, will you please state your name, residence and occupation?

A. C. E. Finley, St. Paul, Minnesota, vice-president in charge of traffic, with headquarters at St. Paul, Great Northern Railroad.

Q. Mr. Finley, will you tell us briefly what your railroad experience has been?

A. I have been with the Great Northern since July of [fol. 2892] 1924. From 1924 to '27 I was first stenographer for the chairman of the board and later was employed in the Right of Way Land and Tax Department at St. Paul, Great Falls, Montana, and Seattle, Washington. In 1937 I returned to St. Paul and occupied the position of, or in the traffic department, and occupied the position of industrial agent, assistant general freight agent, assistant freight traffic manager, and since May of 1946 I have been vice-president in charge of traffic.

Q. Will you tell us your duties and responsibilities as vice-president in charge of traffic department of the Great Northern?

A. As vice-president I have, under the direction of the president, management and control of all matters pertaining to traffic. This includes management of freight, express, mail, passenger traffic of the company, and also supervision of the activities of the agricultural and mineral developments. I have the responsibility, under our president, of determining and carrying out the company's traffic policies.

Q. How are those responsibilities and duties executed insofar as they pertain to the freight traffic of the Great Northern Railway Company?

A. I appoint the traffic officials and I direct and supervise their work. Our freight traffic department is in overall charge of the general traffic manager who reports to me. Under him the department is subdivided into two sections, first, that section responsible for freight tariffs, [fol. 2893] rates and divisions, and, second, that section responsible for sales and service activities, including industrial development. Necessarily, of course, a large amount of authority and responsibility is delegated to those officials.

Q. Mr. Finley, will you tell us what responsibilities and duties are exercised by you in your freight traffic department in connection with freight traffic matters of the Spokane, Portland and Seattle Railway, the Oregon Electric Railway Company and the Oregon Trunk Railway?

A. Freight traffic matters on these three lines are directed and controlled jointly by the traffic departments of the Great Northern and Northern Pacific. I supervise and direct the exercise of that control by the Great Northern traffic department.

Q. Can you tell us just how those duties and responsibilities are exercised by Great Northern's traffic officials?

A. From time to time there is regular contact in the recurring exchange of views between officials of the S. P. and S. System and the traffic systems of the parent lines. This exchange takes the form of conferences, telephone calls and correspondence, and the subjects of discussion may be initiated either by the S. P. and S. or the parent lines' officials.

Q. As a matter of fact, Mr. Finley, the parent lines' officials make frequent trips to Portland in connection with the S. P. and S. matters, isn't that correct?

A. Yes, several trips a year, and each time, I know, that [fol. 2894] I am in Portland I know I confer with the S. P. and S.

Q. Are the S. P. and S. officials sometimes in St. Paul in respect to S. P. and S. traffic matters?

A. Yes, they are.

Q. All right, you may proceed with your explanation.

A. Some of these subjects come to my personal attention so that I pass on them personally. Many matters are handled with the S. P. and S. by other appropriate traffic officials of the Great Northern in collaboration with those of the Northern Pacific. After this free exchange of views decision is made by the parent lines' officers and this controls the action of the S. P. and S. Generally speaking, S. P. and S. has latitude to initiate rates to and from points on its own lines. Some of the rates to points served by the S. P. and S. and its subsidiary are local in character and others are joint rates, a great many of the latter involving participation by a specific tariff concurrence of one or both parent lines. The parent lines are advised of such rate proposals through the regular exchange of views above-described. In the event of a difference in views between S. P. and S. officials and those of the parent lines, the parent lines' decision controls the action of the S. P. and S., both as to local and joint line rates.

On trans-continental rate matters involving S. P. and S. interests, the officials of the parent lines who attend the trans-continental traffic managers' meetings or the execu- [fol. 2895] tive traffic officers' meetings where disposition is made of such subjects directly handle these questions to conclusion on their own judgment.

Q. How about sales and service activities so far as the S. P. and S. is concerned?

A. Sales and service activities of the S. P. and S. traffic department are confined to traffic solicitation in its own territory. The S. P. and S. maintains general agencies at Portland, Eugene, Bend, and Spokane and traveling freight agents covering stations on its own line. The interest of the S. P. and S., so far as sales activities in off-line territory are concerned, is taken care of by sales organizations of the parent lines. The present traffic department of the S. P. and S. reflects reorganization following a survey made by the Great Northern and Northern Pacific traffic officers in the early 1930's.

Q. Mr. Finley, do you know whether or not there has

been any notice to the shipping public that the parent lines represent the S. P. and S. System lines in its outlying territory?

A. Well, I think that fact is common knowledge because a portion of the official railway guide carrying information about the S. P. and S. system lines contains a notation to the effect that all Northern Pacific and Great Northern Railway agents are the direct representatives of the S. P. and S. system lines. In addition, the S. P. and S., Oregon Trunk and Oregon Electric are designated in the guide [fol. 2896] as "Subsidiaries of Great Northern and Northern Pacific Railways". This information is also furnished the public by notations in S. P. and S. Railway timetables.

Q. Do you know, Mr. Finley, how long have the Great Northern and Northern Pacific jointly exercised such supervision and control over the traffic of the Spokane, Portland and Seattle Railway System?

A. Well, from my personal recollection ever since my connection with the Great Northern. I also know that such control was exercised before that time, and, in fact, ever since the Spokane, Portland and Seattle was built the Great Northern and Northern Pacific jointly controlled the traffic in construction materials and supplies moving to the Pacific Coast for the construction of the S. P. and S., so that our joint management and control really antedates the time when the Spokane, Portland and Seattle was put into actual operation.

Q. When did the Great Northern Railway extend to the Pacific Coast, Mr. Finley?

A. We built our line, that is, the Great Northern, west from our eastern terminus at St. Paul, reaching Spokane, Washington, in 1892, and Seattle, Washington in 1893. Our rails did not reach Portland at that time. Portland was then the largest city on the North Pacific coast and afforded a gateway for traffic moving to or coming from beyond particularly the California territory, which was reached by both rail and water routes beyond Portland.

[fol. 2897] Q. You have just mentioned that even before the S. P. and S. was built the Great Northern and Northern Pacific jointly controlled the traffic in construction materials and supplies which were moving to the Pacific

coast for that railroad. Can you explain your basis for that statement?

A. Well, the S. P. and S.—

Mr. Maguire (interrupting): Could I hear that question read, please?

(Question read.)

Mr. Maguire: I object to that, Mr. Examiner, upon the grounds that this is not within the witness's own knowledge.

Exam. Dishman: Can you state of your own knowledge? He asked you to explain the basis for an answer you had given. Can you do that of your own knowledge?

Mr. Witness: My knowledge is from the files of the company, Mr. Examiner.

By Mr. Torinus:

Q. Mr. Finley, in your position as vice-president in charge of traffic you have charge, of course, of the traffic files of the company and are familiar with a great many of the company's records, is that right?

A. I have charge and I am familiar with the records.

Mr. Maguire: I fail nevertheless, Mr. Examiner, to see that while he may have charge of records or of files, nevertheless we do not have the chance or the opportunity [fol. 2898] to cross-examine upon the contents of the files or rather the digest of the contents of the files as given by Mr. Finley if he is allowed to answer the question.

Mr. Torinus: The example, Mr. Examiner, was simply that Mr. Finley explain the basis for a statement that he has already given in the record. I suggest that he be permitted to explain the basis, and after the basis is revealed Mr. Maguire will be given an opportunity to cross-examine.

Mr. Maguire: Then I also move that the original statement be stricken as to the control of the traffic because that is not within the witness's knowledge.

Mr. Torinus: Well, it hasn't been established yet whether it is within the witness's knowledge, that is, per-

sonal knowledge, or whether it is a matter of company history.

Exam. Dishman: Can you find out whether or not it is within his personal knowledge, the question he just answered?

Mr. Torinns: Mr. Examiner, this railroad was constructed in 1905. I don't suppose Mr. Finley could be expected to see the construction materials actually moving out at that time but he said he has access to the company's records and files. I have asked him to state the basis for his statement. Now, I suggest that he be permitted to state the basis for his statement before any ruling is made on whether the motion which Mr. Maguire made with respect to his answer to a previous question be considered.

[fol. 2899] Exam. Dishman: Proceed with the basis for your answer.

A. The S. P. and S. was built at Vancouver, Washington, to the east, not from Spokane to the west. In 1905, before the S. P. and S. was built, our records indicate a special tariff was issued providing for rates on construction materials and supplies to be used in construction of the "Portland and Seattle Railway Company", as it was then called, applicable not only from the Northern Pacific to Vancouver, Washington, but also over the Great Northern to Seattle, thence Northern Pacific to Vancouver. There was, of course, no reason for the Northern Pacific to join the Great Northern in rates on these materials except by reason of the fact that the S. P. and S. construction—

Mr. Maguire (interrupting): Pardon me, Mr. Finley.

That part of the answer stating that there was no reason I move be stricken for that is merely a conclusion, argumentative conclusion, of the witness.

Exam. Dishman: You had started to say something about the Northern Pacific?

The Witness: I said there was no reason for the Northern Pacific to publish rates with us. I was going to try and say if it wasn't a joint enterprise on behalf of both companies—

Mr. Maguire (interrupting): Yes, that is just what I thought you were going to try to say.

Exam. Dishman: Strike that part of it where he started [fol. 2900] to talk about the Northern Pacific.

Mr. Torinus: That is a matter, perhaps, for argument from the facts stated.

Exam. Dishman: All right.

Mr. Torinus: I will agree that it can be stricken.

By Mr. Torinus:

Q. Mr. Finley, what has been the policy of the Great Northern with respect to joint rates in routing in connection with the S. P. and S. since that time?

A. Well, our assistant general freight agent, Mr. Tein, is the one who will cover this subject, but I would like to point out, however, that after the construction of the first segment of the S. P. and S. line between Vancouver and Pasco the Great Northern joined with the S. P. and S. in a full line of rates. The first publication was effective in the spring of 1908 and provided for Great Northern routing east of Spokane, thence Northern Pacific as far as Pasco, thence S. P. and S. When the entire S. P. and S. main line between Spokane and Portland was put into operation approximately a year later a full line of rates providing S. P. and S. routing west of Spokane was made effective immediately and we have continued those rates to the present time, notwithstanding that in 1910 the Great Northern acquired trackage rights extending south from Tacoma into the City of Portland, permitting its own trains to operate to and from that terminus. The long established policy of Great Northern in maintaining joint rates via Spokane with the S. P. and S. System in effect [fol. 2901] generally has made available an additional route that alternates with a direct route of the Great Northern. The examples of this are from the east to the common points of Vancouver and Portland, that is, Vancouver, Washington, and to southern Oregon or California.

Q. Mr. Finley, can you tell us how long the Great Northern traffic department has solicited traffic for movement over the S. P. and S. systemwise?

A. Our active efforts to develop tonnage for this route were initiated before completion of the first segment of the S. P. and S. between Pasco and Vancouver. Instructions were then issued to our traffic representatives in the field to try to secure traffic for this route. When this portion of the line was placed in operation agents at junction points were instructed to forward all unrouted business for Portland so as to move via the S. P. and S. so that our clerks would not continue the practice of billing such shipments over the O. R. and N. beyond Spokane with whom we had rates at that time. Since that time specific instructions have been re-issued from time to time to remind our sales force and our operating personnel of this general policy. Through the years the Great Northern has solicited and now solicits traffic to and from points on the S. P. and S. System and overhead traffic in which the S. P. and S. can participate for movement via its joint routes with the S. P. and S.

[fol. 2902] The distance between our eastern terminals and Portland via the S. P. and S. is shorter than the single line distance of either the Great Northern or the Northern Pacific, therefore the S. P. and S. route has afforded both lines the opportunity to handle freight on schedules faster than through Seattle on the Great Northern or through Albany on the Northern Pacific, which is, of course, an essential factor in the securing of traffic between the Portland area and the east.

Q. Now, Mr. Finley, your testimony up to this point has related primarily to freight traffic matters. Will you tell us whether or not the Great Northern has followed a similar policy, generally speaking, on other phases of S. P. and S. traffic activities? I have in mind, for example, passenger traffic, express, mail, baggage and other activities—

A. (Interrupting) We have.

Q. (Continuing) —under the jurisdiction of the traffic department?

A. We have.

Q. You were in the room, were you, Mr. Finley, when Mr. Lear testified and also when Mr. Webb testified?

A. Yes.

Q. Are you familiar with Mr. Lear's study, which has been introduced in evidence as Exhibit 46, showing traffic originating and terminating on the S. P. and S. System, handled through the Spokane interchange in 1953 in connection with the Great Northern, and with Mr. Lear's [fol. 2903] testimony regarding this exhibit and the traffic shown thereon which would be open to Milwaukee solicitation if its complaint in this case were successful?

A. I am.

Q. Have you an opinion, Mr. Finley, as to how much traffic would be lost to the Milwaukee if the Commission enters an order granting the Milwaukee what it seeks in this case?

Mr. Maguire: Just a moment. If the Examiner please, the witness has not been qualified to indulge in any such computation or I suspect speculation such as that, and I do not believe, while I have the greatest respect for him as a traffic man and that goes also as an official, I don't think that his office beholds that the Great Northern holds any such supernatural powers as would be required to make a reliable statement of that sort.

Mr. Torinus: Mr. Examiner, the question simply was have you an opinion, which Mr. Finley can answer yes or no. I haven't asked him yet what that opinion is.

Mr. Maguire: Well, it doesn't make any difference whether he's got an opinion or not. I object to that question because his opinion, unless his opinion is supported by some qualifying testimony, would be valueless, and the question of whether or not he has an opinion would be, without the opinion itself, would be valueless, of less value. So I think we might as well thrash out this question of opinion right now.

Exam. Dishman: Can you get what he knows about it some other way?

[fol. 2904] Mr. Torinus: Mr. Examiner, let me say this first. Mr. Finley is vice-president in charge of traffic of the Great Northern Railway Company, which is now handling this traffic to and from S. P. and S. points over its existing routes. He is in active charge of solicitation matters on the Great Northern, in active charge also of rate matters. He has had a long experience in sales and

solicitation on the Great Northern Railway Company. One of the businesses of a traffic vice-president is to appraise competitive situations and to solicit traffic over the existing routes of the company. Necessarily that implies a familiarity with the rates and routes of competitors in the same territory. And as Mr. Rockwood points out, the habits of the shipping public, and, certainly, Mr. Finley is as qualified as any witness I can think of to express an opinion as to how much of this traffic which the Great Northern is regularly handling to and from S. P. and S. points would be subject to diversion to one of its principal competitors should these routes and rates be established. Of course, when he gives the answer, it is an opinion, that is all it is, but it is an opinion of an informed and qualified railway official who is in the business of appraising competitive factors. Certainly, I think the traffic vice-president of the Great Northern should be permitted to give that answer.

Exam. Dishman: Do you think, Mr. Torinus, that his [fol. 2905] opinion on this matter will be of any benefit to the Commission resolving the issues in this proceeding?

Mr. Torinus: Yes, sir, I do. I think the Commission would want to know in its determination of this proceeding not only what the potential traffic susceptible to Milwaukee solicitation will be, as Mr. Lear and Mr. Webb have pointed out, and those gentlemen, of course, are primarily accounting men, but they would also want to know, I am sure, what our officials judge to be the effect.

Exam. Dishman: Is there any way—

Mr. Torinus: It isn't binding. It's an opinion.

Exam. Dishman: Is there any way to accurately gauge this matter? Isn't it just a guess on the part of anybody?

Mr. Torinus: Well, it is an estimate. It is no more than a guess, Mr. Examiner, than the estimates that the Commission regularly receives in the ex parte increase cases of traffic officials of all railroads throughout the United States as to the amount of traffic they may retain under the increased rates that the Commission authorizes. The Commission necessarily can't have all matters of this kind demonstrated arithmetically or proven statistically, they have to receive opinion evidence, the same as courts

regularly receive opinion evidence. When they have a witness on the stand who is as qualified as Mr. Finley is I should think the Commission would want to know what his opinion is. I am not saying it should be binding [fol. 2906] on the Commission but I would think they would certainly like to have that opinion subject to Mr. Maguire's very thorough cross-examination as I know he would want to cross-examine Mr. Finley on that subject.

Mr. Maguire: If I might suggest, Mr. Examiner, there are some very glowing qualifications of Mr. Finley in the record but they are Mr. Torinus's statements rather than Mr. Finley's statements. He can ask Mr. Finley whether all the nice things he said about him are true and I think Mr. Finley should admit them.

By Mr. Torinus:

Q. For the record, Mr. Finley, I will ask you—

I would like, Mr. Examiner, to ask Mr. Finley one or two additional questions with respect to his qualifications.

Exam. Dishman: All right.

By Mr. Torinus:

Q. Mr. Finley, in the regular course of your duties as vice-president in charge of traffic of the Great Northern Railway Company, for the information of management, do you regularly make forecasts of the amount of business that the Great Northern is going to handle over particular periods of time?

A. We are called upon by the president the first of the year to make a forecast for that year. And then at the end of each quarter we are called upon to review that forecast for the subsequent quarter or quarters, whatever the case may be. And many times we are called upon to make forecasts for rate cases, as you pointed out, [fol. 2907] and while sometimes we must admit it might appear that you are asking for something pretty far away it is surprising to see how close we come.

Q. Those forecasts, are they made, Mr. Finley, after giving consideration to transportation competition in the

area which the Great Northern serves and to and from the points over which its rates apply?

A. Yes, they do take that in consideration.

Q. They're regularly made as a part of the company's business, as a part of your business in the traffic department, is that right?

A. Very definitely.

Q. And how long has that been going on?

A. Well, that has been going on, to my personal knowledge, since I have been in this position in May of 1946, and I know from my other work in the traffic department we were called on at that time to make these forecasts.

Q. Now, Mr. Finley, do those forecasts which you make in the regular course of your business as to Great Northern traffic sometimes extend over considerable periods of time?

A. Yes. As I said before, we are asked the first of the year to make one for the entire year and then we have to review that each quarter, but we have within the past year, year and a half—I wouldn't want to be held to any exact date—have had to make at the request of the president a five-year forecast, and we had to do that because [fol. 2908] of a five-year program he was setting up on the railroad.

Q. Was that a program for capital investment, do you know, Mr. Finley?

A. We had to make the forecast and then the operating department had to put in what they expected to spend in the next five years, and the whole thing then went to the vice-president, comptroller, and he presented the picture to the president, and I can say that on expenditures and A.F.E.'s or authority for expenditures, that I have to sign the notation that is on there, included in the five-year program" or "not included in the five-year program", so it is something that is being followed.

Q. So that a portion of the regular business of the Great Northern Railway Company depends upon these forecasts that you regularly make, is that it?

A. That is correct.

Q. Now, I would like again to ask Mr. Finley whether or not he has an opinion, based upon his experience and

based upon the information contained in Exhibit 46, as to how much traffic would be lost to the Milwaukee if the Commission enters an order granting it what it seeks in this case.

Mr. Maguire: You are asking him now whether he has an opinion?

Mr. Torinus: That is right, just whether or not he has an opinion. I am not asking him what his opinion is.

[fol. 2909] Exam. Dishman: Let the witness answer whether or not he has an opinion.

A. Yes, I have an opinion.

Exam. Dishman: I would like to ask one question along that line.

In making your forecast how do you determine or what do you take into consideration in determining how much competitive traffic your line will receive from other lines that have equal access to the traffic? Just how do you make that determination?

The Witness: Well, that is all broken down, Mr. Examiner, into territories. For instance, practically all traffic originating on the Pacific Coast or destined to the Pacific Coast is competitive traffic. The only thing local we would have in the State of Washington would be Wenatchee, Washington, and that is competitive with the trucks. On this S. P. and S. traffic, that's all competitive.

By Mr. Torinus:

Q. Do you take into consideration in making these traffic forecasts the pattern in which the traffic is moved? Do you have available, for example, your previous estimates and how they have been borne out and information as to the previous pattern of the traffic to and from the particular territories?

A. We have that pattern and then every now and then we see where we can improve that pattern a little to make our forecast more accurate, so we do that.

[fol. 2910] Q. Now, Mr. Finley, I have asked you whether or not you have an opinion and you have said yes, you have an opinion. Would you please state what that opinion is?

Mr. Maguire: Now, Mr. Finley, will you please wait just a moment?

Mr. Examiner, I should like the opportunity at this time before the witness states his opinion to cross-examine, as is my right, as to his qualifications and as to the data which was prepared before this opinion is given. It deals with qualifications if I may have the privilege at this time.

Exam. Dishman: All right.

Mr. Maguire: Mr. Finley, when you make your forecasts, your periodic forecasts in your company, in general the technique is to split up your forecasts territorially and have your territorial representatives prepare them, is it not?

The Witness: We start—

Mr. Maguire (interrupting) You start at the division?

The Witness: We start right through Conrad's office in the general traffic manager, then it is broken down for data from the western traffic manager at Seattle and the assistant general freight passenger agent at Great Falls, Montana.

Mr. Maguire: That is, they furnish their parts of the forecasts?

The Witness: That is right. Then that all siphons through Mr. Conrad's office.

[fol. 2911] Mr. Maguire: Do you have regular forms showing traffic, the number of cars by commodities last year and what it is anticipated this year and the percentage of change and so forth?

The Witness: Well, there is not a regular form but they are guided by what we handled last year of this commodity or that commodity.

We take crop conditions, soil conditions into consideration because that is such a big factor in our revenue. We take the forecasts that are made by the regional advisory boards and we confer, for instance, on lumber. With such heavy commodity we confer with the principal operators to see how their sales are coming in, how their, what we call it, their order book, whether it is high or low.

Mr. Maguire: That basic data is in the first place prepared by officers or representatives who are closer geographically to the source of traffic and then they are assembled in St. Paul and evaluated and weighted there by general information which you or Mr. Conrad or your assistant prepares, isn't that the way it is done?

The Witness: When Mr. Conrad gets the information assembled I go over it personally with those who have assembled it together, and in detail, and many times I make changes. I either think they are too optimistic or too pessimistic as a result of my frequent trips over the railroad.

Mr. Maguire: But what I am getting at is that this [fol. 2912] estimate which is made does not go from the top down in your department? In other words, you don't make it and then have your subordinates take a shot at it for criticism?

The Witness: I couldn't make it.

Mr. Maguire: Of course you couldn't. You have to go from the grass roots right up?

The Witntss: Certainly.

Mr. Maguire: So then your western traffic manager perhaps may get data from district or division freight agents?

The Witness: That is right.

Mr. Maguire: And then he compiles that?

The Witness: That is right.

Mr. Maguire: And then his opposite number, a traffic official on your eastern end of the line, will do the same thing with regard to the local traffic representatives in the different territories in the eastern half of your line, isn't that right, Mr. Finley?

The Witness: That is correct.

Mr. Maguire: Then your off-line agencies will also make estimates so far as traffic originating or which they expect to terminate in their respective territories, do they not, Mr. Finley?

The Witness: That is correct.

Mr. Maguire: And then when all that gets together, it is [fol. 2913] brought in together, then it is analyzed by Mr. Conrad or someone he designates and then Mr. Conrad takes it up with you and you use your over-all knowledge of the situation to make amendments or changes in the estimates just judging from your general view of the entire situation?

The Witness: That is right.

Mr. Maguire: Is that an accurate description of the way you do it?

The Witness: Only one thing, Mr. Maguire, if we hit it on the nose we never hear anything about it but if we miss it we never hear the end of it.

Mr. Maguire: How true that is. And, of course, when you make these periodic traffic estimates you are dealing with rates, competitive rates, competitive situations, the way they exist at that time or the way they exist or will exist in the immediate foreseeable future, isn't that true?

The Witness: That is correct.

Mr. Maguire: As a basis for your opinion as to the effect of the Milwaukee's complaint, did you go through that procedure to arrive at this present opinion which you are about to express?

The Witness: Yes.

Mr. Maguire: Did you get reports from your division? Or, rather, did you get reports from your western traffic manager who in turn consolidated reports from your division people?

The Witness: No, we didn't get detail. I didn't get [fol. 2914] detailed reports, Mr. Maguire. But from the time the Milwaukee started this case against the S. P. and S. I assure you that this subject has had active consideration, and we have from time to time tried to work up figures as to what we might come out with because this entire S. P. and S. territory where the business is actually produced on the S. P. and S. is covered by our Portland agency, and I have gone into it pro and con with all of the boys in that organization on any number of instances, the last one being a week ago Monday when I came through Portland.

Mr. Maguire: Did you get any reports from them in the same manner that you get when you make your periodic forecasts?

The Witness: No, I did not.

Mr. Maguire: This was just general discussion?

The Witness: That is right, but we had figures in front of us when we were having our general discussion.

Mr. Maguire: Were those figures somewhat like, or do they correspond with, what was in Mr. Lear's exhibit?

The Witness: No; we were working from our own traffic reports.

Mr. Maguire: But that was as to volume of business, volume of movement, direction of movement, and so forth?

The Witness: And right down to the customer.

Mr. Maguire: And also what would be deemed competitive and non-competitive, such as Mr. Lear has lined up here, did you consider that along the same lines?

[fol. 2915] The Witness: Yes. You see, Mr. Maguire, as you probably know as well as I do, all business off the S. P. and S., except what moves to local points, originates in local points, is competitive to the Great Northern, is competitive with the Northern Pacific, so we consider all, we actually consider all S. P. and S. business competitive.

Mr. Maguire: That is, any business that is destined to the S. P. and S., regardless of route or movement, and anything that originates on the S. P. and S., regardless of route and movement, you regard as competitive business?

The Witness: If it doesn't move to or from our local territory.

Mr. Maguire: You say if it does not move to or from your local territory?

The Witness: That is right.

Mr. Maguire: Mr. Examiner, I think that this opinion has been shown to be arrived at not in the method which was described so much in detail that is used in making the ordinary forecast of traffic. However, I think that my comments on it would run rather to the weight. I think that the weight of it has been or will be analyzed still further and so I will not object to Mr. Finley's stating his opinion.

Exam. Dishman: All right. Proceed.

By Mr. Torinus:

Q. Mr. Finley, will you please state what your opinion is?

[fol. 2916] A. The addition of a third competitive route between all points in the United States east of Spokane and points on the S. P. and S. System lines will affect us seriously. While I cannot say definitely what proportion of traffic might ultimately be diverted to the Milwaukee it is reasonable to expect that with a third transcontinental carrier soliciting traffic to—

Mr. Maguire (interrupting): Pardon me, Mr. Finley. I believe his question was to the opinion of the amount of business that would be diverted.

Exam. Dishman: It has been asked as to the amount of traffic that would be diverted.

Mr. Torinus: He is about to state that if Mr. Maguire permits him to do so.

Mr. Maguire: Well, there has been a lot of surplusage before he gets to that.

Exam. Dishman: Were you coming to that, Mr. Witness?

The Witness: I am coming to that.

A. It is reasonable to expect that with a third transcontinental carrier soliciting traffic to and from this area, stressing the fact that it operates on its own rails between the Pacific Coast and Chicago, we stand a good chance of losing one third of the total competitive business.

Mr. Torinus: You may cross-examine.

Oh, excuse me, I have another question.

By Mr. Torinus:

Q. Mr. Finley, when you said one third of the competitive [fol. 2917] business, will you state whether or not you mean one third of the total business which would become open to Milwaukee solicitation should it be successful in this case in connection with traffic moving via the S. P. and S.?

A. That is right.

Mr. Torinus: You may cross-examine, Mr. Maguire.

Cross-examination.

By Mr. Maguire:

Q. Mr. Finley, could you tell me by what process of reasoning you arrived at the proportion of one third loss to the Milwaukee?

A. Well, Mr. Maguire, I base that on just what we run up against day in and day out. When we get a little more competition westbound, we took this into consideration, our westbound, most of our westbound business is originated in the territory of Chicago and the east, and Chicago is our

heaviest producing outlying agency. The Milwaukee not only has its own line to and from Chicago but plays a very important part in the industrial setup in the Chicago area and serves some very fine industry. Actually, in our own thinking, we feel that the Milwaukee will probably have an easy time of taking one third or more of our westbound business that would move on the S. P. and S.

And then considering what position we are in in Portland, our Great Northern office, and, as I said, this Portland office covers all S. P. and S. territory with the exception of the joint line between Portland and Centralia. We [fol. 2918] do have a traveling agent out of Portland that makes that territory. And our Spokane office covers the portion of the S. P. and S. from Spokane to Pasco. There isn't much business in there anyway. But figuratively speaking, our Portland office is considered an off-line office. We do not handle our own trains in there over the S. P. and S., they are handled by the S. P. and S. We handle our own trains from Seattle to Portland but the S. P. and S. or the N. P. Terminal company do all of our switching, we do not. We have only road haul locomotives between Seattle and Portland. So, again, I say we are off line. When we go in to call on a customer, particularly where you are not the line that can offer him direct service where he can depend on you for a switch engine or somebody give him a little out of the ordinary service, we are treated strictly as an off line, and putting it frankly in this game of sales on the railroad, there are just about two things that you can sell, one is your service and one is yourself. If you've got the service then it is up to you to sell yourself. Well, you've got some nice boys too, so have we, and if they wouldn't be able to sell themselves they probably won't stay with you very long, so it's only natural to assume that your getting into that territory and probably, as we say, barn-storming it, especially in starting out, you are bound to get some business, and when you get business off of the S. P. and S. you are going to take it from the Great Northern or the Northern Pacific, so I actually feel that it is going to take a [fol. 2919] little dynamiting on our part to have our boys keep up with the pace that you will probably set.

Q. On your eastbound business how much do you think we'd take away from you there, about what proportion?

A. I feel that you will get in-between twenty-five and thirty per cent.

Q. Just let me ask you this, of course, so far as solicitation in the Willamette Valley is concerned, for example, the S. P. and S. has its representatives down there, does it not?

A. Yes.

Q. And they are not only soliciting hauls over the S. P. and S. but I presume they are soliciting hauls over the Great Northern and Northern Pacific, are they not?

A. They are entirely neutral, Mr. Maguire. In other words, if they get their S. P. and S. haul they don't dare suggest to a shipper routing it over the Great Northern or Northern Pacific, the shipper has to pick that route.

Q. But when you say you are an off line, the Great Northern is an off line, so far as S. P. and S. traffic is concerned—

A. (Interrupting) In solicitation.

Q. It is not the originating line?

A. That is correct.

Q. That brings in the cars and performs the switching and things of that sort?

A. That is correct.

[fol. 2920] Q. And that, you feel, places you at a lesser advantage than if you had direct track connections of your own with the industries you solicit?

A. Definitely so.

Q. And all off lines are to that same disadvantage to greater or lesser degrees, are they not?

A. Yes.

Q. Of course, we realize, Mr. Finley, that in making an estimate of this kind there has to be a certain amount of, let us say, sane speculation tempered by experience, isn't that true?

A. I don't know what you mean, Mr. Maguire, I am sorry.

Q. You don't understand me?

A. I don't understand you.

Q. In other words, you have to look into the future, keeping your feet on the ground, and in your forecasts you

try to be conservative, naturally, do you not? You don't want to get yourself out on the end of the limb with any ridiculous prediction?

A. Yes, you try to stay on the conservative side.

Q. That is a conservative speculation into the future, tempered, however, by your experience and your knowledge of the various factors which might affect your conclusion?

A. That is right.

Q. So that based upon your experience, your knowledge of the situation, and your knowledge of your potential competition, you have come to the conclusion that you stand a [fol. 2921] chance of losing one third of your total competitive business?

A. One third of the total competitive business.

Q. One third of the total competitive business?

A. Yes.

Q. Of the S. P. and S.?

A. Yes, that is right.

Q. And in your opinion, it is your opinion that on the westbound traffic the Milwaukee would take one third or more of the westbound business originating Chicago and east?

A. Yes.

Q. And that on your eastbound business you feel that the Milwaukee would take twenty-five to thirty per cent of the eastbound competitive business?

A. Yes, and that is why I made the statement that I think in the over-all picture it would average about one third of the business.

Q. And in making that, coming to that conclusion, you have waived all of the facts which, of course, are known to you as to the character of your own company, the character of your possible competition, you have waived all facts in arriving at that decision?

A. Have waived all what?

Q. You have waived all factors?

A. Yes, we have.

Q. Now I want to go back, we got ourselves interested in [fol. 2922] this prediction which is a very interesting one anyway. There are some details of your earlier examination which I would like to touch upon. You state that the

official railway guide shows that Northern Pacific and Great Northern agents are representatives of the S. P. and S.?

A. That is right.

Q. Where would you find that in the guide?

A. Mr. Maguire, right on the first page announcing the S. P. and S.

Q. Then it says a subsidiary of the Northern Pacific and Great Northern, or words to that effect?

A. Yes.

Q. Under the name of the company?

A. Yes.

Q. And then where is there any reference to Great Northern and Northern Pacific agents on the first page?

A. As I recall, it is down at the bottom of the first page, and it is in the S. P. and S. timetable where they list their various agencies.

Q. Oh, I see, the agencies listed in the public timetables—

A. (Interrupting) Of the S. P. and S.

Q. Of the S. P. and S.—

A. (Interrupting) And also those words I quoted are listed, I think it is the first page of the S. P. and S. announcement of their trains and schedules.

[fol. 2923] Q. Now, which are the words you first quoted, which ones are you talking about now?

A. I think I quoted what actually was said in the guide there.

Q. I wonder if you would read that to me? You have your notes there before you.

A. I said this, Mr. Maguire—well, I will go back a little. Here is what I said, I believe that the fact is common knowledge because a portion of the official railroad guide carrying information about the S. P. and S. System lines contains a notation to the effect that all Northern Pacific and Great Northern Railway agents are the direct representatives of the S. P. and S. System lines. In addition, the S. P. and S., Oregon Trunk and Oregon Electric are designated in the guide as "subsidiaries of Great Northern and Northern Pacific Railways".

Q. I see. As to the policy, as to the traffic policies of the S. P. and S.—I don't want to stretch out cross examination

unduly—you were present when Mr. R. E. Smith was on the stand this morning, were you?

A. Yes.

Q. And you recall we had a fairly lengthy conversation?

A. Yes.

Q. And do you disagree with any of the statements made by Mr. Smith on cross-examination?

A. No, I don't.

Mr. Torinus: Just a minute. Could I have that question [fol. 2924] repeated, please? I didn't hear the question.

Mr. Maguire: I asked whether Mr. Finley disagreed. He heard Mr. Smith's cross-examination and I asked him if he disagreed with any of the statements made by Mr. Smith on cross-examination.

Mr. Torinus: I will object to that question as indefinite. Mr. Smith testified as to all kinds of subjects within his personal knowledge which are not within the scope of Mr. Finley's direct and probably not within the scope of Mr. Finley's personal knowledge.

If you have some specific question, Mr. Maguire, I wish you'd ask him.

I will object to that question as too general and indefinite.

Mr. Maguire: I am talking about the policies of the Great Northern and Northern Pacific with respect to the S. P. and S. as testified to by Mr. Smith, not as to detailed information or specific transactions at all, but as to his testimony.

Mr. Torinus: Mr. Smith has testified, Mr. Maguire had the opportunity to cross-examine him fully on his testimony after he concluded his direct testimony. Mr. Finley has testified and covered a number of subjects in his direct testimony. I have no objection to Mr. Maguire cross-examining Mr. Finley fully on all the subjects he covered in his direct examination but I object to his now attempting to cross-examine Mr. Smith by asking Mr. Finley some questions.

Mr. Maguire: I am not trying to cross-examine Mr. Smith.

[fol. 2925] Exam. Dishman: Mr. Finley had already answered the question.

What was your answer?

Mr. Torinus: I objected to the question.

Mr. Maguire: He said he did not disagree.

Exam. Dishman: Do you want the question and answer stricken? Are you moving they be stricken?

Mr. Torinus: I asked that the question be read and now somebody tells me that he answered.

Exam. Dishman: Well, he has answered it.

You did answer it, did you not?

The Witness: Yes.

Exam. Dishman: What is your position regarding it now?

Mr. Torinus: Well, now that I have heard the answer I have no motion with respect to the question. The answer, I do not disagree, is a rather innocuous answer in any event.

A. I might say this, Mr. Maguire, if I may.

By Mr. Maguire:

Q. Yes?

A. Maybe I was a little more familiar on some of the exact things that took place or in connection with the question of policy. I could have elaborated on them a little more because I was actually in on them. Generally speaking, Mr. Smith outlined about what takes place.

Q. That is very satisfactory to me.

Let's get back here for a moment to your opinion as to the diversion of traffic or the loss of traffic to the [fol. 2926] Milwaukee. Of course traffic is lost or diverted from one line to another only where the shipping public prefers to divert, isn't that true? The shipping public is the final judge, isn't it?

A. That's right.

Mr. Maguire: That is all.

Mr. Torinus: I have just one or two questions on redirect.

Redirect examination.

By Mr. Torinus:

Q. Mr. Finley, does the Great Northern now encounter competition of the Milwaukee Railroad with respect to transcontinental traffic to and from such common points as Spokane, Seattle and Tacoma?

A. Very definitely.

Q. You are familiar with that competition and the extent of it, are you?

A. Yes.

Q. Do you know whether or not the Milwaukee Railroad has solicitors down in the Willamette Valley, in the Eugene area, for example?

A. Yes. As a matter of fact, like some of the other railroads, they opened up an office down in Eugene. We do not have one there. We have a traveling agent who covers the territory out of Portland.

Q. Milwaukee has a general agency at Eugene?

A. I could be corrected on this, he is either classed as a commercial agent or a general agent.

[fol. 2927] Q. With an office at Eugene?

A. Yes.

Q. The Northern has no agency—

A. (Interrupting) He may make his office at home, I am not sure; he is listed at Eugene.

Q. You are talking about the Milwaukee?

A. That's right.

Mr. Torinus: I have no further questions.

Thank you, Mr. Finley.

Exam. Dishman: Are there any other questions?

Mr. Maguire: No, sir.

Exam. Dishman: The witness is excused.

(Witness excused.)

Exam. Dishman: We will now recess until 9:30 tomorrow morning.

(Whereupon, at 5:07 p.m., an adjournment was taken until 9:30 a.m., Friday, April 8, 1955.)

[fol. 2930] Exam. Dishman: The hearing will come to order, gentlemen.

Mr. Golden: Could we have the exhibit marked for identification?

Exam. Dishman: Yes.

The exhibit just distributed is No. 48.

(Defendant's Exhibit No. 48, Witness Burgess, was marked for identification.)

C. H. Burgess was sworn and testified as follows:

Direct examination.

By Mr. Golden:

Q. Would you state your name, residence, and business?

A. C. H. Burgess, vice-president, operation, Northern Pacific Railway, St. Paul, Minnesota.

Q. And what has been your railroad experience?

A. I started in with the Northern Pacific in 1916, and after serving in various capacities in the engineering and track department I became a train master in 1936 and assistant superintendent in 1939, and then in various positions as superintendent, assistant general manager, general manager, and finally I was made vice-president in 1954.

Q. Mr. Burgess, you have been given a copy of Mr. Webb's Exhibit 47?

A. Yes.

Q. The Exhibit 47 that I speak of is this orange colored [fol. 2931] one that I hold in my hand here.

A. Oh, I beg pardon. I have that, Mr. Webb's exhibit, yes.

Q. Which exhibit shows an approximately potential loss to the Northern Pacific in this case of at least 26,637 carloads of traffic, amounting to $10,757,940.00 in revenue. If it should be assumed that the Northern Pacific would lose up to 1/3 of that amount, would you be able to reduce your operating expenses by running fewer trains.

A. Not to any appreciable extent. There would be a theoretical saving of about one eastbound train per month.

Q. On what do you base your conclusion?

A. From Mr. Webb's exhibit we were able, or through the information which he used to make that exhibit, we were able to pick out a representative month, which was the month of July 1953. This month was an average month, indicated the average situation with respect to the cars delivered to and received from the S. P. and S. From that average month or representative month we made an actual train sheet check of our trains to see what we could have done in movement of trains had the amount of business which we received from the S. P. and S. and subject to solicitation by the Milwaukee been reduced by 1/3, which we assumed as the proportion of the business which we might lose if the Milwaukee was successful in this particular case.

Q. Then your conclusion was that you might reduce the train—

A. (Interrupting) Our conclusion was very definitely [fol. 2932] that we might reduce one eastbound train per month from Spokane through to the Twin Cities. Our westbound business, westbound trains, are not affected in any way.

Q. What would the out-of-pocket savings in that case amount to per year?

A. About $46.000 00. On top of that there would be some indirect savings like per diem, car repairs, but insignificant compared with the amount at issue in this case.

Q. Mr. Burgess, you have before you a graph which has been marked for identification as Exhibit No. 48. Was that prepared under your supervision and direction?

A. Yes.

Q. Would you please state what it is and explain its significance?

A. It is a diagram which shows graphically the clearance restrictions on the Northern Pacific and Milwaukee. The line shown solid red, the load limits as published in the Railway Line Clearances for the year 1954 for the Northern Pacific. And the yellow line—

Q. (Interrupting) That is the solid yellow line?

A. The solid yellow line, the Milwaukee load limits as published in the Railway Line Clearances for the year 1954.

Q. Now the red dotted line, what does it show?

A. The red dotted line, which is the outer line as shown on this diagram, are the load limits graphically depicted here on the basis of a clearance of one and a half inches [fol. 2933] to certain limiting structures along our line between St. Paul or Minnesota Transfer and Spokane.

The broken dotted line—

Q. (Interrupting) That is the yellow line?

A. Yes, in yellow, colored yellow, in the upper portion of the diagram are the load limits of the Milwaukee, in accordance with Mr. Crippen's testimony at Chicago, as shown on the transcript Pages 1365 to 1408 of his testimony.

Q. You, of course, do not have any other data than that that is in the record as to clearances on the Milwaukee?

A. No.

I might point out here that the Northern Pacific arbitrarily has set forth, insofar as the Railway Clearances is concerned, a width of eleven foot six inches. The Milwaukee has adopted a width of twelve feet. That applies between three foot and fourteen foot six inches above the top of the rail. We do, as do the Milwaukee, readily accept and handle a twelve-foot width load, but we choose to, insofar as the Railway Line Clearances is concerned, we choose to specify eleven foot six inches clearance so that we will have a record of any loads coming to us in excess of that amount of in excess of that width.

Q. Can you draw any conclusion from the data which is graphically portrayed on this Exhibit No. 48?

A. Yes. Insofar as the data shown hereon, we are able, the Northern Pacific is able, to handle any load that could [fol. 2934] be handled over the Milwaukee, subject, of course, to the fact that I do not know anything about the Milwaukee situation, except that which was described in Mr. Crippen's testimony and that which is published in the Railway Line Clearances.

Q. Mr. Burgess, how many gross ton miles of all classes of traffic were handled by the Northern Pacific in 1943?

Mr. Maguire: In what year?

Mr. Golden: 1943.

A. Forty-two billion three hundred forty-two million three hundred nine thousand gross ton miles.

By Mr. Golden:

Q. And the same information for the latest year available?

A. Which is 1953; 37,907,214,000 gross ton miles.

Q. And that would be how much less than in 1943? Do you have that computed?

A. Yes. The difference, 4,435,095,000. And, of course, that means that in 1953 our gross ton miles were that amount less than they were in 1943.

The 1954 figures are unavailable, but will approximate about 38,000,000,000 gross ton miles.

Q. Quite similar to 1953, then?

A. Very similar to 1953, yes.

Q. Have there been any improvements to roadway and equipment since 1943 for the purpose of increasing the capacity, the tonnage capacity, of the railroad?

[fol. 2935] A. Oh, yes. We have carried on an improvement program throughout those years—

Q. (Interrupting) Excuse me—go ahead.

A. First, in connection with Dieselization, at the end of 1943 we had only 37 Diesel units and 836 steam locomotives. By the end of 1953 we had 283 Diesel locomotives or Diesel units and 584 steam locomotives. By the end of 1953 the number of Diesel units had been increased 319, and by the end of 1955, when we get delivery of the Diesel units we now have on order, we will have a total of 390.

Insofar as the physical property is concerned, we have made very substantial relays on the main line on heavy rail, and our main line is now nearly 100 per cent crushed rock. We have made a good many improvements. Perhaps the most outstanding is the one that is now in progress at Pasco where we are constructing an automatically controlled retarder yard at a cost of about five and a half million dollars, which will be in operation about June 1 of this year.

Between the years 1940 and 1954 the Northern Pacific completed 114 line changes, which involved a reduction of main line distance of 12.4, 12.4 miles, the elimination of 131 curves, or expressed otherwise, a reduction of 10.2 complete circles of coverage.

We have radio communication on all main line freight Diesels, on most main line cabooses, and on part of our [fol. 2936] territory between Dilworth, Minnesota, and Glendive, Montana, we have radio communication facilities between moving trains, the dispatcher, and wayside stations. We also have radio communication between switch engines and yard offices at six of the more important terminals. We have about fifteen and a half, fifteen and a half miles of centralized traffic control, the principal installation being on the Rocky Mountain Division between Helena, Montana, and Garrison, Montana, a distance of forty-five miles over the mountain grade which exists in that territory.

I think maybe that perhaps gives a picture of what we have accomplished to increase the capacity of the main line territory.

Q. Do you have figures there for the comparative tractive effort of the power for '43, and a recent date?

A. Yes. In '43 the tractive effort of our motive power amounted to 45,224,000 pounds, and by 1953 that had been increased by 3,377,000 pounds of tractive effort to a total of 48,601,000 pounds.

Q. Would you conclude from these data, then, that the railroad is not being used to capacity at the present time?

A. No, it is not being used to capacity by any means, and we are in a position to accept a great deal more business than we now have and, naturally, have no difficulty in handling the business we are now handling, including that which comes to us from the S. P. and S. or which we deliver to the S. P. and S.

Mr. Golden: You may cross-examine.

[fol. 2937] Cross examination.

By Mr. Maguire:

Q. Mr. Burgess, maybe I misunderstood, didn't catch all you said about the possible reduction of one eastbound train with an out-of-pocket savings of $46,000.00 a year. How many trains during the year would you save?

A. I should have said, and perhaps I failed to do so, I should have said one eastbound train per month.

Q. Maybe you did say that, and I missed it. That would mean that you would save a little bit under, on a pocket basis you would save a little bit under $4,000.00 per operation?

A. That is correct.

Q. I wish to refer to the gross ton miles handled in 1943 as against 1953. Of course 1943 was one of the war years at which rail traffic all over the country was at an all-time peak, isn't that true?

A. That is correct.

Q. And following the war there has been a reduction in gross ton miles handled by all of the railroads all over the country?

A. I think that is generally true, yes, sir.

Q. Now let's look at your Exhibit 48 for a moment. If you will take the dotted yellow line, which shows the Milwaukee load limits, as you express them, or extreme clearances, per the testimony of Mr. Crippen and compare those with the solid red line, which is the published load limits of the Northern Pacific—I don't intend to draw any invidious comparisons between either of the lines, you will [fol. 2938] understand—but so far as the overwhelming preponderance of traffic is concerned, both lines are just about equal so far as clearances are concerned, wouldn't that be the case, that is, equal to all practical intents and purposes?

A. I think that is a very fair statement.

Mr. Maguire: Those are all the questions I have. Thank you, Mr. Burgess.

OFFER IN EVIDENCE

Mr. Golden: I would like to offer Exhibit No. 48.

Exam. Dishman: Exhibit No. 48 is received.

(Defendant's Exhibit No. 48, Witness Burgess, was received in evidence.)

Exam. Dishman: The witness is excused.

(Witness excused.)

Mr. Torinus: I would like to call Mr. Irwin, please.

WILLIAM B. IRWIN was sworn and testified as follows:

Direct examination.

Mr. Torinus: Mr. Examiner, may we be off the record while these exhibits which have been distributed are identified?

Exam. Dishman: All right.

Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

By Mr. Torinus:

Q. Mr. Irwin, will you please state your name, residence, and occupation?

[fol. 2939] A. William B. Irwin, I-r-w-i-n, assistant to the vice-president, operation, Great Northern Railway, St. Paul, Minnesota.

Q. And your headquarters are here in St. Paul, too, Mr. Irwin?

A. That is correct.

Q. Will you state briefly your railroad experience?

A. I have been in the employ of the Great Northern over 46 years in the engineering and operating department, and since June 1936 have been assistant to vice-president of operation with the duties of a general assistant to the vice-president.

Q. Will you tell us when the Great Northern was constructed through Spokane from the east, Mr. Irwin?

A. The Great Northern was constructed through Spokane from the east in 1892 and began operations between St. Paul and Seattle, Washington, in 1893.

Q. At the present time, or maybe we had better give those figures for the end of the year 1953, can you tell us how many miles of railroad the Great Northern operated and how many stations it served and how many states and Canadian provinces are reached by the Great Northern System?

A. At the end of 1953 the Great Northern operated eighty-three hundred five miles of railroad and served

more than eight hundred stations in ten states and two Canadian provinces.

Q. Have you prepared at my request a series of three map exhibits to illustrate certain physical characteristics of the Great Northern Railroad? And I am referring now to Exhibits 49, 50, and 51, Mr. Irwin.

[fol. 2940] A. I have.

(Defendant's Exhibits Nos. 49, 50, and 51, Witness Irwin, were marked for identification.)

By Mr. Torinus:

Q. Will you proceed in your own way to explain the operating and physical characteristics of the Great Northern's system, referring to these exhibits or illustrations in your discussion?

A. The operating divisions, of which there are nine, are shown in various colors on Exhibit No. 49. This exhibit shows the location of all terminals and of all principal stations, but not all of the small intermediate stations, and shows the location of stretches of double track, which will appear a little more clearly on Exhibit 51 because double track is indicated in faint double lines which in some cases are somewhat obscured by the heavy coloring on Exhibit 49.

Exhibit No. 50 is a condensed profile which also shows in tabulated form road characteristics of the Great Northern prepared for general use of our personnel. This shows the maximum grade or, I should say the ruling grade, on each operating subdivision, the road miles on the road subdivision in question, together with the total rise and fall, the miles of grade and various rates of per cent and the miles of tangent and curve and the bridge capacity on each operating subdivision.

[fol. 2941] Exhibit 51 is a system map which shows all operating divisions, but without their being colored to distinguish one from another as was done in the case of Exhibit 49. This Exhibit 51 shows the location, likewise, of all of the terminals, the principal stations, shows the location of all segments of second track, double track, and approaching and leaving terminals and various segments of second track at strategic points between terminals.

Q. Mr. Irwin, can you tell us how many of those eighty-three hundred five miles of road operated by the Great Northern consisted of main line and how many miles of branch line?

A. The Great Northern report to the Interstate Commerce Commission for the year 1953, Form A, divides the eighty-three hundred five miles of road between main line and branch line, forty-three hundred twenty-seven miles of main line and thirty-nine hundred seventy-eight miles of branch line. Thus, there is about 48 per cent of the railroad comprising branch lines. Then with the addition of tracks in yards, sidings, and other tracks amounting to thirty-nine hundred forty-two miles, the total mileage for all tracks is twelve thousand two hundred fifty miles for the system.

Q. As of that same date, Mr. Irwin, at the close of 1953, what was the Great Northern Railway Company's investment in its transportation property?

A. $785,567,930.00 at the close of 1953.

Q. Do you have another figure for total investment?

A. I have.

[fol. 2942] Q. You might tell us what that figure for total investment is and what that includes.

A. The figure for total investment is $790,752,388.00. I am not prepared to discuss in detail the property that is represented by that approximate $5,000,000 difference as between transportation property and total investment, but it is of the order of property that is generally reported to the Commission as miscellaneous physical property.

Q. Do either of these figures include cash, material, and supplies?

A. No, they do not.

Q. Will you proceed with your explanation, Mr. Irwin, of the physical characteristics of the Great Northern's line, indicating to the extent you care to the improvements that have been made through the years since the line was constructed through to Spokane and Seattle?

A. Generally speaking, the Great Northern has continued to improve and modernize its property to the extent that 58.6 per cent of the original line west of Shelby, Montana, which is just about at the eastern foothills of

the Rocky Mountains, has been improved by line or grade revisions or both. This includes important and costly revisions in both the Rocky Mountain and Cascade Mountain crossings. Grades have been lowered, curves straightened, tunnels and steel bridges constructed, tracks strengthened by heavier rail and modern appliances, terminals have been improved and modern equipment [fol. 2943] acquired. The property now providing the lowest rate of grade and the shortest mileage between St. Paul and Duluth, also, and Seattle. From 1920 the termination of Federal Control Line Revisions for the entire system have reduced distance practically 10 miles.

Mr. Maguire: Are you at a place where I could interrupt you just a moment?

The Witness: Surely.

Mr. Maguire: I notice Mr. Irwin is reading from a prepared statement. Do you have a copy available so I can follow it?

Mr. Torinus: Mr. Irwin is reading from some notes, but he isn't following, as I understand it, the text a hundred per cent.

Mr. Maguire: I have noticed everything he said so far, with the exception of a few questions, has been read from this prepared testimony. If you do have a copy available, I should appreciate an extra copy.

Mr. Torinus: I have a marked-up copy of my own, Mr. Maguire.

Mr. Maguire: I don't want to deprive you of it. After all, you are presenting this witness.

Mr. Torinus: I am sorry. I don't have an extra one.

By Mr. Torinus:

Q. I don't believe it is quite true, Mr. Irwin, that you have been reading 100 per cent?

A. Not 100 per cent, although I have been following this rather closely. And unfortunately I haven't an extra copy with me, Mr. Maguire.

Mr. Maguire: I don't think I am badly hurt, and I am [fol. 2944] not going to be technical about this.

Mr. Torinus: We will proceed slowly, Mr. Maguire, and if there is something that you don't catch, Mr. Maguire, we will be glad to go back.

By Mr. Torinus:

Q. You were discussing line revisions, Mr. Irwin, since the termination of federal control.

A. Yes. And they have amounted to practically 10 miles shortening of distance, 9.93 line miles to be quite exact, and have reduced curvature more than 23 complete circles. Grade revisions have reduced rise and fall 943 feet on the main line. With favorable grades and adequate motive power only a limited amount of doublehead or helper mileage is operated, and in 1953 this amounted to only 6/10 of 1 per cent of principal locomotive mileage.

Q. Mr. Irwin, can you tell us the exact extent to which the Great Northern Railway utilizes steam and Diesel power?

A. Some steam power is still used east of Minot, North Dakota; none west of Minot. We have the electrified section in the Cascades, amounting to a line mileage of 74 miles. Some Diesel service is operated on the electrified section.

Q. Will you point out for the Examiner where that electrified section is with reference to Exhibit 49, Mr. Irwin?

A. On Exhibit 49 it is on the Cascade Division shown in green with its eastern limits at Appleyard, which is the terminal point for Wenatchee shown in larger letters. [fol. 2945] Q. That is all in the State of Washington in the western portion, the Great Northern?

A. That is correct. It is all in the State of Washington through the Cascade Tunnel to the point Skykomish on the west slope of the Cascades shown on the map just west of the words "Cascade Tunnel".

Q. Perhaps you hadn't completed your explanation of the extent to which the Great Northern has been Dieselized.

A. The electric motive power is used for about 2 per cent of total freight and passenger service. In 1954 Diesel

and electric motive power handled 92 per cent of the freight service, 99 per cent of passenger service, and 90 per cent of yard service was handled by Diesels.

Mr. Maguire: Let me just catch up with you there.

The Witness: Well, I think that I should go back, Mr. Maguire.

Our electric locomotives handle both passenger and freight service, and the amount of their locomotive mileage is about 2 per cent of the whole. Then 92 per cent of our freight service was handled by Diesel locomotives, 99 per cent of our passenger service was handled by Diesel locomotives, and 90 per cent of our yard service by Diesels.

Mr. Maguire: That is Diesel, not combined Diesel and electric?

The Witness: Nothing is combined, except my first reference of 2 per cent to combined passenger and freight service with electric locomotives.

[fol. 2946] Mr. Maguire: I wonder if I may explore that just a moment just to make sure I understand these figures.

The 90 per cent of your yard service is all performed by Diesel locomotives, is that right?

The Witness: Yes.

Mr. Maguire: The 92 per cent of your freight service is performed by a combination of Diesel and electric?

The Witness: No. This 92 per cent is all Diesel, and it includes the small amount of freight service that—well, I will have to back up on that. First we took our total amount of electric motive power service in freight and passenger service, which amounted to about 2 per cent. Then as to the total freight service, 92 per cent is performed by Diesels.

Does that clarify it?

Mr. Maguire: Yes. Then your 99 per cent of the passenger service was performed by your combination of Diesel and electric, or am I wrong on that one, too?

The Witness: The amount performed by electric service is included in that 99 per cent.

Mr. Maguire: Yes.

The Witness: I think that will clarify your question.
Mr. Maguire: Yes, that is what I meant.
The Witness: Yes, it is.
Mr. Maguire: Thank you.
The Witness: Yes, sir.

[fol. 2947] By Mr. Torinus:

Q. You may proceed, Mr. Irwin.

A. The Great Northern was a pioneer in the use of Diesel motive power, acquired its first Diesel, which was a 660 horsepower unit, in 1926. Then the Great Northern, together with the Santa Fe, developed heavy traction Diesel power for freight service. The Great Northern has continued to add to its Diesel freight so that at the end of 1954 it consisted of 583 units with 4-unit Diesels of large capacity, 6,000 horsepower total.

Trains of 5,000 tons are handled in either direction without helper service between Wenatchee and the Twin Cities. And trains of 7,500 tons can be handled in either direction between Havre and the Twin Cities.

Mr. Maguire: Would you just give me a moment to write those down?
Mr. Torinus: Sure.

By Mr. Torinus:

Q. Mr. Irwin, how about automatic block signals on the Great Northern?

A. They are installed throughout the main line between St. Paul and Seattle and on various other lines so that we have 2,760 miles of signals.

Q. Do we have any centralized traffic control?

A. We have centralized traffic control between Delano and Willmar, Minnesota.

Q. Those towns are on the main line just a short distance west of Minneapolis, is that correct?

[fol. 2948] A. That is correct. They are shown on the Willmar Division.

Q. Which is indicated in red on Exhibit 49?

A. That is correct.

Then there are shorter stretches of centralized traffic control on two points on the Kalispell Division. I may find that some of these smaller stations are not shown on this system map. But one stretch of centralized traffic control between Blackfoot and Browning, Montana, and another between Libby and Troy, Montana, those are both on the Kalispell Division, which is likewise shown in red, so that the total mileage of centralized traffic control of those three segments is 87 miles.

Q. And have we also installed spring switches, Mr. Irwin, on our main line?

A. We have done that extensively so that we have them installed at 261 locations on the railroad. These permit trailing movements through closed switches, thus eliminating a train stop for hand operation of the switch, and have the effect of accomplishing substantial savings without incurring the greater expense of installing centralized traffic control.

Q. How about radio communication?

A. We have radio communication between the rear- and head-end of all of our through freight trains between the Twin Cities and Seattle, and have radio service at 46 wayside train order stations, and have radio in various of the larger yards.

Q. Mr. Irwin, can you describe some of the standards [fol. 2949] used for main line track construction on the Great Northern?

A. Standard for main line track construction is a wide roadbed sloped, and adequately drained cuts, grouted embankment where soil conditions require, 12 inches of sub-ballast which amounts to 6,480 cubic yards per mile, crushed rock or stone ballast 2,000 cubic yards per mile, treated ties 3,240 per mile with heavy plates and rail anchors and 115-pound rail in main tracks at a cost of $55,000.00 per mile for that portion of the track structure above the finished roadbed, that is, above the profile subgrade.

We also have various stretches of continuous rail, welded rail, eliminating rail joints principally.

A highly mechanized program has been developed for maintenance of tracks and structures.

Q. Have there been improvements in the line and improvements in the grade of the Great Northern, substantial improvements, during the period commencing with World War II and subsequent to World War II?

A. There have been substantial improvements from Spokane easterly through the Rocky Mountains in both line and grade revisions and one extremely important improvement of that kind on the east slope of the Cascade Mountains. The cost of these improvements has been in excess of $4,000,000.00, and in addition, many terminals have been improved and enlarged, all of which serve to increase the traffic potential of the railroad and to make [fol. 2950] an important contribution to national defense.

Q. Mr. Irwin, have you made a spot check of the comparative volume of traffic moving over the main line of the Great Northern during wartime and in more recent years, and can you tell us what that spot check has been?

A. I think spot check is a correct designation because I started it with a record that I kept during wartime when traffic was extremely heavy, and as a critical point I kept a record of traffic moving over the summit of the Rocky Mountains as being, perhaps, about as difficult a stretch of operating area as we had.

Q. Mr. Irwin, before you give us the result of that check, will you locate for the Examiner on Exhibit 49 just where Summit is? Is that the station on the Kalispell Division which is indicated in red in the State of Montana between Glacier Park on the east and Nimrod on the west?

A. That is the location; and it likewise appears on Exhibit 50 as the high point at the crossing of the Rocky Mountains.

Q. That is—

A. (Interrupting) Designated as Marias Pass.

Q. That is the place where the Great Northern crosses the Continental Divide, is that right?

A. That is correct.

Q. All right, you may proceed.

A. During World War II Great Northern successfully handled a volume of traffic substantially heavier than that [fol. 2951] currently moving, and the numerous improve-

ments made since the war have further increased the potential capacity of the railroad.

The record to which reference was made was for the highest number of freight cars handled over the Continental Divide at Summit in October 1944, November 1944, and June 1945.

Q. Before you give us those figures for October, November, 1944, and June 1945, will you tell us whether or not you also made spot checks of the loads and empties handled over the summit over comparable days in the years 1953 and 1954?

A. I did that; and, in addition, determined the highest number of loads handled during the months in question.

Q. That is, the highest number of loads in any day?

A. In any day in the months in question in '53 and 1954.

Q. All right, will you give us the result of your check, Mr. Irwin?

A. In October 1944, the highest number of freight cars per day, 1,375; in October 1953, 1,123—

Mr. Maguire (interrupting): May we go off the record?

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

A. The average in October '53, 795, and in October '54, 793.

In November 1944, 1,449; in November 1953, 1,092; in November 1954, 969; average November '53, 781; average November 1954, 772.

[fol.2952] Highest, June 1945, 1,391; June '53, 1,065; June '54, 1,033; average June '53, 721; average June '54, 759.

By Mr. Torinus:

Q. Mr. Irwin, why did you select those months of October, November, and June?

A. In the first instance, because they represented the peak traffic that came to my attention during the war effort, and in order to have a direct comparison with the same season of the year and the same character of com-

modities moving, which might be seasonal, I took the same months for the comparison in the later years, 1953 and '54. In that way I was sure of comparing substantially the same climatic or temperature conditions as well as any seasonal movement of commodities.

Q. All right, Mr. Irwin, you may proceed with your discussion of the physical characteristics of the Great Northern.

A. The Great Northern Line east of Spokane is double-tracked approaching or leaving many of the terminals, as shown on Exhibit 51, thus expediting movement through terminals and reducing terminal delays. In addition, there are numerous stretches of double track at various strategic points on the main line, as indicated on the same exhibit.

During the 10-year period—

Mr. Maguire (interrupting): Could I ask a question just for clarification there?

All of your double trackage on your main line shows up in Exhibit 51, does it?

[fol. 2953] The Witness: It does.

A. During the 10-year period, 1944-1953, inclusive, Great Northern gross expeditures for additions and betterments were $82,199,144.00, road equipment; $163,735,665.00: total, $245,934,809.00. That resulted in a net increase of $180,625,510.00 in investment account after deducting cost of property and facilities retired.

By Mr. Torinus:

Q. Mr. Irwin, will you describe the principal terminals of the Great Northern Railway Company between and including Spokane and the Twin Cities?

A. The principal western terminal of the Great Northern in the area involved in this case is at Hillyard, Washington, Spokane, where are located locomotive and car shops, and the refrigerator car repair facilities of Western Fruit Express Company, a wholly-owned Great Northern subsidiary. A modern Diesel shop has just been placed in service at Hillyard. There is an emergency

icing station here for perishable shipments. Hillyard, which has a track capacity of 3,184 cars is the terminal where S. P. and S. System Lines traffic is interchanged to and from Great Northern. Spokane and Hillyard are State of Washington Grain Inspection and Sampling points. Cars from S. P. and S. territory are added to Great Northern trains at Hillyard for eastward movement through Whitefish, the next terminal of importance.

By Mr. Torinus:

Q. Those terminals are all indicated, of course, on Exhibit 49?

[fol. 2954] A. Yes.

Q. So if the Examiner desires to follow your testimony, he can start with Hillyard, which you have just described on the Spokane Division indicated in yellow, and proceed eastward, is that correct?

A. That is correct.

Whitefish terminal includes engine house, car repair, and icing facilities. This yard has a capacity of 1,648 cars. There is a regular icing station here for perishable traffic. Diversions of cars for movement to Kansas City, Denver, and Texas points through the Billings Gateway are arranged at Havre and the cars are then diverted at Shelby—correction. I should have said that the diversions are arranged at Whitefish, and the cars are diverted at Shelby, just east of Whitefish, for movement via Great Falls to Billings, Laurel terminal. As previously stated, the Continental Divide is crossed at Summit, Montana, on the Kalispell Division at an elevation of 5,211 feet. Shelby is a Grain Inspection and Sampling point.

Traffic from S. P. and S. System Lines routed via Great Northern through Billings Gateway to Kansas City, Denver, or points beyond moves from Shelby over the Butte Division shown in green on Exhibit 49 through Great Falls to Laurel Terminal 15 miles west of Billings for interchange to the Chicago, Burlington, and Quincy Railroad.

The Great Falls terminal, which handles that class of [fol. 2955] business en route, includes Diesel shop, car shop, and icing facilities, and this is an emergency icing

station for perishable traffic, and is also a State of Montana Grain Inspection point. Through freight trains of the Great Northern terminate at Laurel, which is a joint Northern Pacific-Great Northern, Burlington terminal owned and operated by the Northern Pacific. Laurel is a regular icing station for perishable traffic.

Then returning to the Great Northern main line, Havre on the Butte Division is an important terminal where are located the principal Diesel shop of the system, car repair and icing facilities, this being an emergency icing station for perishable shipments, and a yard with 2,132 car capacity.

The next terminal east is Williston, which is a regular icing station for perishable traffic. Here are located locomotive car repair and icing facilities, and a yard with a capacity of 1,774 cars.

The next important terminal east is Minot, which includes an engine house, car shop, icing facilities, and a yard which presently has a car capacity of 2,197 cars. This is a Federal Grain Inspection and Sampling point and an emergency icing station for perishable traffic. Diversion of grain for direct rail-lake movement to head of lakes at Superior, Wisconsin, is arranged at Minot.

Q. You are about to make some improvements in that Minot terminal, are you, Mr. Irwin?

[fol. 2956] A. We are proposing to erect or construct a completely modern car retarder type yard at Minot at an investment in excess of $6,000,000.00. The contract has been awarded for this work, and construction work will start this month. When completed the total capacity of Minot yards will be 4,584 cars.

I would like to mention there that capacity of the new construction will be 3,445 cars, but construction involves removal of some existing trackage making up the 2,197 car capacity of the present yards so that the combined capacity upon completion of the retarder yard of the then remaining present yard and new construction will be 4,584 cars.

Livestock, which is reloaded after feeding in transit at Minot Stockyard, is classified at the Minot terminal for delivery to connections at Willmar or Minnesota Transfer and Twin Cities for movement east and south. The main

freight route via Minot is via the Surrey Cutoff, from Surrey through Nolan and Casselton to Breckenridge. That is to say, it follows the yellow line on the Minot Division on Exhibit 49.

Q. That is the southernmost yellow line, is that right?

A. From Minot through Surrey and New Rockford to Nolan, then through Casselton and Wahpeton to Breckenridge.

Breckenridge is an emergency icing station for perishable traffic. There are locomotive and car repair facilities at this point and a yard of 1,145 car capacity.

East of Breckenridge on the Willmar Division shown in [fol. 2957] Exhibit 49 passing tracks are being extended and rearranged for installation of centralized traffic control between Breckenridge and Willmar.

Willmar is an important terminal with locomotives and car repair and icing facilities and a yard with 1,560 car capacity. That is a regular icing station for perishable traffic and is also a State of Minnesota Grain Sampling point. Eastward freight trains are classified at Willmar for delivery of cars to industries at Twin Cities and for interchange to connecting carriers at Minneapolis and Minnesota Transfer and also classified for the Sioux City Line and beyond; the line shown in red extending southerly from Willmar on Exhibit 49.

As previously stated, centralized traffic control is now in service between Willmar and Delano, 64 miles east toward the Twin Cities.

In the Twin Cities there are four main tracks, two passenger main lines, and two freight main lines. Approaching the Twin City terminal from the west, Cedar Lake receiving and classification yard is at the west end of the Minneapolis terminal and does not appear in detail on Exhibit 49 because it is a part of Minneapolis Terminal proper.

Cedar Lake receiving and classification yard has a capacity of 1,402 cars.

Then next eastward is Lyndale Yard, a secondary train yard, with capacity of 1,223 cars.

[fol. 2958] Next easterly is Union Yard, the principal Great Northern train yard in the Twin Cities, and it is adjacent to Minnesota Transfer. Union Yard has a capacity

of 2,529 cars. Then there are other smaller yards, auxiliary freight yards, with a total capacity of 905 cars, bringing total capacity of Minneapolis Freight Terminal to 6059 cars.

Minneapolis Terminal has locomotive car repair and icing facilities. The regular icing station for perishable traffic in the Twin Cities' terminal is at Minnesota Transfer. Minneapolis and Minnesota Transfer are Federal and Minnesota State Grain Inspection points.

During the grain season from 3,500 to 4,000 cars of grain are handled daily at the Great Northern terminal, classifying cars for delivery to connecting lines and for placing cars at mills and elevators.

Interchange of freight traffic to and from connecting carriers is made at the Lyndale Yard and at Union Yard, and largely through Minnesota Transfer.

Exam. Dishman: We will take a short recess.

(Short recess.)

Exam. Dishman: The hearing will be resumed, gentlemen.

By Mr. Torinus:

Q. Mr. Irwin, can you tell us what the Great Northern ownership of locomotives was as of December 31, 1953?

A. As of that date the Great Northern owned 912 locomotives, including 546 Diesel units. The total tractive [fol. 2959] power was 60,909,000 pounds.

Q. Now I notice that that figure of 546 doesn't compare with the 583 units in 1954 which you mentioned earlier in your testimony. Were some additional units added in '54?

A. We acquired additional units in '54.

Q. Did you give the total tractive efforts of that locomotive power?

A. Sixty million nine hundred nine thousand pounds.

Q. That's of December 31, 1953?

A. That is correct.

Q. Now can you tell us what the Great Northern's freight car ownership was at that time?

A. Thirty-nine thousand two hundred seventy-one freight train cars.

Q. Their average capacity?

A. Fifty-four point sixty-three tons; and an aggregate capacity, two million one hundred twenty-one thousand fifteen tons. That's as reported to the Interstate Commerce Commission, Form A.

Q. Mr. Irwin, is this a good place to discuss your Exhibit 56, which is the last exhibit which I distributed, but which contains a statement of Great Northern box car ownership? Will you proceed to explain Exhibit 56?

(Defendant's Exhibit No. 56, Witness Irwin, was marked for identification.)

A. Exhibit 56 is a statement of Great Northern box car [fol. 2960] ownership by type of cars as reported in the Official Railway Equipment Register, July 1954. There were 14,599 box cars 40 feet long, 100,000 pounds capacity, 3,700 cubic feet or more. There were 1,522 50-foot box cars of the single door type.

Q. I don't think you need to read, necessarily, the figures throughout the exhibit.

A. The total box cars were 21,332.

Q. Do you have some additional comment to make with respect to the Great Northern's box car ownership?

A. The Great Northern owns 2,942 50-foot general purpose type of box cars and is keeping abreast of the demand for double door cars for lumber and plywood loading by converting narrow doors to 8-foot doors or to 12- and 15-foot double doors.

Q. Now, that's the total of the figures in the second and third lines on Exhibit 56, isn't that correct, Mr. Irwin?

A. That is correct.

Q. You may proceed.

A. This policy has provided about 1,000 double door cars and 350 cars with 8-foot doors for loading with fork lift trucks, and this program is being continued.

Q. Mr. Irwin, can you compare the Great Northern's trailing gross ton miles in freight service in the year 1943 with the trailing gross ton miles in freight service for the year 1953 with respect to those particular divisions which embrace the Great Northern's main line between Spokane [fol. 2961] and the Twin Cities, that is, the main line that you have described earlier in your testimony?

A. I have such information for the main line divisions, Twin Cities and west, which differs from the system in that it excludes Mesabi, Dakota, and Klamath Divisions. However, this figure I have does include the Cascade Division, Wenatchee and west, which is shown in green on Item 49.

Q. Oh, I see.

A. The trailing gross ton miles in 1943 for the divisions enumerated, Willmar, Minot, Butte, Kalispell, Spokane, and Cascade Divisions, were 27,796,716,238.

Q. That's for 1943?

A. For 1943.

Q. For 1953, do you want to give us that figure?

A. If you wish: 27,759,232,183.

Q. Now, for 1954.

A. Twenty-seven billion three hundred sixty-two million nine hundred sixty-three thousand naught thirty-six.

Q. Mr. Irwin, will you tell us whether or not in your opinion from these figures that you have given and from the testimony you have already given with respect to the improvements on the Great Northern System since World War II and during World War II and from your general experience and knowledge in the operating department of the Great Northern whether during the years 1953 and '54 the Great Northern has been operated to capacity?

A. It has not. There is not only a smaller gross ton mile [fol. 2962] movement, but giving effect to the great improvement in the motive power and the road property; physical facilities, the capacity of the property is substantially in excess of the amount of traffic that we were favored with in 1953 and '54.

Q. So that the percentage of capacity at which the Great Northern has operated in the last two years is substantially less than the percentage of capacity during World War II, is that correct?

A. We handled more traffic during World War II than we have handled in these recent years and with less facilities, less adequate facilities, than we have now so that with our present power, equipment, and facilities we would be able to and would handle more traffic per year than we handled during the war years.

Q. Mr. Irwin, you mentioned trailing gross ton miles in

1943 for certain divisions compared with later years. Do you have any figures or computations with respect to the trailing gross ton miles on the system handled in 1943 by steam as compared with a similar computation for the year 1954?

A. In 1943 we had not made substantial progress in Dieselization in that we then had only 66 Diesel units so that we were still largely in steam, and in that year, 1943, our trailing gross ton miles were handled 97.3 per cent by steam, 1.5 per cent by Diesel, and 1.2 per cent by electric locomotives.

Then in 1954, when we had 546 Diesel units, having acquired 37 during the year—the 37 are not included in the 546.

[fol. 2963] Q. In 1954 the Diesel units, the total was 583, is that correct?

A. That is correct.

And steam had by that time been reduced to 7.1 per cent, and Diesel had increased to 91.8 per cent, and electric locomotives 1 per cent in trailing gross ton miles.

Q. Now, Mr. Irwin, I'd like you to take up next Exhibit 52, which has been distributed and is the exhibit entitled "Miscellaneous Operating Statistics", and tell us what that shows.

(Defendant's Exhibit No. 52, Witness Irwin, was marked for identification.)

A. Exhibit 52 is a comparison of miscellaneous operating statistics for the year 1953 for Northern Pacific, Milwaukee, and the Great Northern. It contains a vast amount of comparative data.

Q. I think the exhibit is largely self-explanatory, but I would like you to point out, if you will, Mr. Irwin, what you think are the most significant comparisons on that exhibit.

A. There is the comparison of miles of operated road, Northern Pacific, 6879; Milwaukee, 10,665; Great Northern, 8,303; and the gross revenue freight: Northern Pacific, $163,906,018; Milwaukee, $225,986,274; Great Northern, $243,645,588.

Operating expenses: Northern Pacific, $146,833,940; Milwaukee, $218,183,759; Great Northern, $194,883,917.

Q. Those expense figures you have just read are from Page 2, is that correct?

A. That is correct.

[fol. 2964] Following significant figures: operating ratio freight: Northern Pacific, 71.31; Milwaukee, 74.02; Great Northern, 62.46.

Transportation ratio: 38.09, Northern Pacific; 39.86, Milwaukee; 32.11, Great Northern.

Total maintenance ratio, including both maintenance of way and structures and maintenance of equipment: Northern Pacific, 35.77; Milwaukee, 37.13; Great Northern, 34.86.

I think those are the most significant comparisons on the exhibit.

Q. Mr. Irwin, were these operating statistics which appear on Exhibit 52 all taken directly from the annual reports, the so-called Form A reports, of the three respective railroads to the Interstate Commerce Commission for the year 1953?

A. I believe that these are basically Form A reports. It is possible that some of the information on this combined exhibit came from Statistical Section of Annual Reports to Stockholders, but I would be unable to say as to that.

Q. At least the figures are all either from annual reports or stockholders' reports or computations, mathematical computations, from figures in those reports, is that right?

A. It is; so that they are directly comparable.

Q. Mr. Irwin, I would like to have you take up next, if you will, Exhibit No. 53 and also Exhibit 54, both of which relate to clearances. Will you tell us first what Exhibit 53 is?

[fol. 2965] (Defendant's Exhibit No. 53, Witness Irwin, was marked for identification.)

A. Exhibit 53 is the Great Northern Clearance Circular No. 78, issued by general superintendent transportation, A. W. Campbell, effective April 1, 1955, showing maximum dimensions for loads on open cars. This circular was prepared for ready reference and use by the Great Northern personnel in determining the handling of loads which might be actually or thought to be oversize as to clearance features.

By Mr. Torinus:

Q. Mr. Irwin, did the Great Northern recently complete a check of its clearances by means of a clearance car that went over the system?

A. It made such a check at critical points, and by that I mean it checked the terminal areas and the lines of railroad where there are numerous tunnels and structures perhaps limiting clearances, but did not cover that portion of the main line for a recheck where no such conditions exist.

Q. This circular which appears as Exhibit 53 was completed or was prepared after the completion of that check, is that right?

A. That is correct. The check was made last fall, and our clearance data revised and this circular issued as of April 1, 1955.

Q. Has the information which is summarized in Exhibit 53 been submitted to the publication Railway Line Clearances for publication in their May issue?

A. It has been submitted, but in greater detail probably [fol. 2966] than is shown on this circular in order to conform to the reporting method used in publishing Railway Clearances for the use of all lines.

Q. The publications or the information contained in Railway Line Clearances so far as the Great Northern is concerned, is that obtained from the Great Northern?

A. It is.

Q. And this information summarized on Exhibit 53 has been submitted to the editors of that publication for publication in their May issue, is that correct?

A. That is correct.

Q. Are you prepared now to take up Exhibit 54?

A. Yes, sir.

(Defendant's Exhibit No. 54, Witness Irwin, was marked for identification.)

A. Exhibit 54 is a clearance diagram showing the Great Northern and Milwaukee comparative load limits between Minnesota Transfer at St. Paul and Spokane.

By Mr. Torinus:

Q. The line in solid red on Exhibit 54, will you tell us what the source of the information is with respect to that line?

A. The outer line in solid red on Exhibit 54 represents Great Northern load limits with one and one-half inch clearance to structures and indicates unpublished load limits, but does not indicate the size of an over-sized load [fol. 2967] which can be handled when advance notice is received and when given special handling.

Q. You have called that outer line solid red, and I see that is in solid red, but I think underneath there is a black dotted line.

A. Well, all right, then. The outer line which has a dotted line underneath the red.

Q. That is the line you have just described?

A. That is the one I have just described. Whereas the inner solid red line, which has no dotted line underneath it, is Great Northern published clearance distance or, more correctly, to be published in the May issue of Railway Line Clearances as revised from our clearance measurements of last year, and loads within the perimeter of that section can be handled without restrictions and with no advance notice.

Q. And what does this exhibit show with respect to the Milwaukee, Mr. Irwin?

A. It shows in solid yellow the Milwaukee published clearances and shows in yellow over a broken line Milwaukee unpublished clearances as described in Mr. Crippen's testimony.

Q. You had the transcript of the testimony of Mr. Crippen available when this exhibit was prepared?

A. I did. I read the testimony and the transcript was furnished the engineers who prepared this diagram.

Q. Do you have any further comment with respect to Exhibit 54?

A. Not at present.

[fol. 2968] Q. Exhibit 55, Mr. Irwin?

(Defendant's Exhibit No. 55, Witness Irwin, was marked for identification.)

A. Exhibit 55 is a comparative profile of the respective main lines, Great Northern being shown in red, Northern Pacific in yellow, and Milwaukee in dark blue. This profile is of that portion of the respective main lines between St. Paul or Minnesota Transfer and Spokane and shows the respective mileages and the respective rates of grade, including the crossings of the Continental Divide and of lesser divides.

By Mr. Torinus:

Q. What is the source of the information contained on Exhibit 55?

A. It is a composite profile which was prepared from information furnished by each of the three railroads, and I believe the same profile has been used in other proceedings.

Q. In other words, the engineering departments of the Great Northern, Milwaukee, and Northern Pacific regularly exchange information of this type, is that right?

A. They do.

Q. And that is the source of the information on this exhibit?

A. That is correct.

Q. While the exhibit is largely self-explanatory, can you point out on the exhibit the place where the Great Northern crosses the Continental Divide, which, I understand, is the point of highest altitude on the main line?

[fol. 2969] A. The Great Northern crosses the Continental Divide at Summit, Montana, which is the highest point on the Great Northern's main line and is shown immediately west of the space mile 1,100 on this composite profile with an elevation of 5,211 feet.

Q. I believe the comparisons with the Milwaukee and Northern Pacific are self-evident from the exhibit, and I won't ask you to detail those comparisons unless you feel some comment is appropriate.

A. The only comment that I have to make is to emphasize that Great Northern has only one mountain crossing east of Spokane and has the lowest crossing of the Continental Divide.

Q. Do you have any further comment with respect to Exhibit 55?

A. Great Northern's mileage to Spokane is 1,446 miles.

Q. That's shown on the exhibit, and that's the shortest mileage of the three lines, is that correct?

A. That is correct.

Q. Do you care to make any comment with respect to the ruling grades shown on this profile?

A. The Great Northern ruling grade over the Continental Divide is 1 per cent westbound and 1.8 per cent eastbound, and that is the heaviest ruling grade that Great Northern has east of the Cascade Mountains and is the lowest ruling grade of the three lines.

Q. Do you know, Mr. Irwin, whether or not these lines shown on Exhibit 55 are the main lines for freight of the [fol. 2970] respective railroads?

A. They are, yes, sir.

Q. Now I would like to ask you a few more questions with respect to Great Northern car supply. I believe you discussed a short time ago the Great Northern's box car supply, and I neglected to ask you how perishable traffic on the Great Northern is handled generally and what provision we make with respect to supplying cars for perishable service.

A. Perishable traffic on the Great Northern is serviced by Western Fruit Express Company, which is a wholly-owned subsidiary of the Great Northern. The Western Fruit Express owns and operates 5,831 refrigerator cars as of December 31, 1953. However, Western Fruit Express is one of three associated companies handling perishable service, the other two being Fruit Growers Express, which operates in the east and the southeast, and the Burlington Refrigerator Express, which operates on the C.B.&Q. and its affiliated lines, so that the three associated companies pool their ownership of cars and transfer it from one area to another in accordance with seasonal demands. For example, Great Northern's heaviest seasonal demand for refrigerators is during the winter months when it is moving apples from the Wenatchee Valley or potatoes from Red River Valley, whereas Fruit Growers Express handles citrus fruits and early spring vegetables and that sort of thing, so that difference in seasonal demands enables these associated companies to

move their supply of refrigerators in accordance with [fol. 2971] seasonal demands for loading. And the three companies had a combined ownership of twenty-one thousand five hundred seventy-five refrigerator cars as of March 15, 1955.

Q. What was that total again, Mr. Irwin?

A. Twenty-one thousand five hundred seventy-five. The Western Fruit Express Company for itself, and I think the same thing is true of its associated companies, but W.F.E. has been carrying out a program of replacing small capacity wooden frame refrigerator cars with steel cars equipped with modern trucks, doors, bunkers, and superior insulation, so that more than half of its cars are now of all steel construction. In addition, the W.F.E. was one of the early users of mechanical refrigerated cars and now has 60 of these cars in service and, I believe, 50 additional on order or possibly delivered by this time.

Q. Mr. Irwin, will you tell us, please, the manner in which the S. P. and S. Railroad and its subsidiary lines, the Oregon Trunk and the Oregon Electric, are supplied with cars insofar as you are familiar with that situation?

A. The Great Northern because of its investment in the S. P. and S.—.

COLLOQUY BETWEEN EXAMINER AND COUNSEL

Mr. Maguire: Just a moment, please. I move that those words be stricken. I think that just simply calls for a factual answer as to what is done, and I believe that the statement of reasons for doing things or what this witness conceives to be the reasons can well be omitted from a factual reply.

[fol. 2972] Exam. Dishman: Can you just give what was done and the reasons?

Mr. Maguire: May I ask that that clause "because of their interest in the S. P. and S." or words to that effect be stricken as not responsive?

Mr. Torinus: I think the reason is self-evident. I have no objection to Mr. Irwin omitting it from his explanation.

Mr. Maguire: You can argue about the reason later, but I would rather not have the witness argue about it, too. It's too many against one.

Mr. Torinus: Against one?

A. The Great Northern has always recognized an obligation to provide—

Mr. Maguire: Just a moment, please.

Exam. Dishman: You are getting into argument. Just state what they did.

Mr. Maguire: I think Mr. Irwin had better forget his text and just give us the facts here.

Mr. Torinus: Maybe we can proceed this way. I can ask a question and, if it is objectionable, you will have an opportunity to interpose an objection, and I will try to frame the question to call for a satisfactory answer.

Will that satisfy you, Mr. Maguire?

Mr. Maguire: It is not a question of satisfying me; it is just a question of getting nonfactual matter in the [fol. 2973] record. You can go any way you want.

Mr. Torinus: All right, I will proceed in my own way without regard to your being satisfied or not.

Mr. Maguire: I think you will, anyway.

By Mr. Torinus:

Q. Well, Mr. Irwin, can you tell us whether or not the Great Northern has made an effort to provide the S. P. and S. Railway System—and by the word "system", I mean the three lines, S. P. and S., Oregon Electric, and Oregon Trunk—with an adequate supply of cars for loading on the S. P. and S. System?

A. It has. The Great Northern has—

Mr. Maguire: Just a moment. I think the question has been answered, Mr. Examiner.

Exam. Dishman: That is your answer, that it has?

The Witness: It has.

By Mr. Torinus:

Q. What has the Great Northern done with respect to supplying the S. P. and S. with cars and just how has

the Great Northern treated the demands of the S. P. and S. System Lines for cars for loading?

Mr. Maguire: Just a moment, please, Mr. Irwin.

I think the question could stand some clarification. When you say just how have they treated the demands, does it mean whether preference has been given to the S. P. and S. over other connecting lines or just what is the meaning of the question? I don't want to move to [fol. 2974] strike an answer, and I may not have to, if I find out what you are attempting to elicit.

Mr. Torinus: Well, all I am asking, Mr. Maguire, is what the Great Northern does to meet the demands or the needs of the S. P. and S. for cars when there is traffic to be loaded on the S. P. and S. System. I think the question is—

Mr. Maguire: Nothing could be fairer than that question.

Mr. Torinus: Thank you.

A. It treats the S. P. and S. just as though it were one of Great Northern's—

Mr. Maguire (interrupting): Just a moment. The question was what has been done, not a comparative statement, but a factual statement, and I move that that answer so far as has been given be stricken as argumentative.

I believe everybody understands here, witnesses included. I know it is a great temptation for the gentlemen on the other side of the room to write their briefs through the mouths of a witness, but I think that is an argumentative statement. Now, I think if the witness just simply says that every effort is made to fill the demands he doesn't have to compare it with any department of the Great Northern, and I think that propaganda argument can just as well be omitted from the record.

Mr. Torinus: Mr. Examiner, I object to Mr. Maguire attempting to circumscribe the witness into a little box where he can't fully describe in the best way that he knows how what the Great Northern does, and if it treats the [fol. 2975] S. P. and S. in a manner which is comparable with its treatment of needs or demands on the Great Northern System, I think that he should be able to explain

that fully, and I would think the Commission would want to have his complete explanation. I think if he is permitted to proceed, knowing in view of the colloquy which has taken place that Mr. Maguire has a strenuous objection to any testimony which even approaches argument, that I can cover the situation very well and within the bounds of admissible evidence, and I suggest that he be permitted to proceed.

Mr. Maguire: Are you admonishing the witness not to argue the case at this time?

Mr. Torinus: I am not admonishing anybody, not even you, sir.

Exam. Dishman: Well, proceed, leaving out argument.

A. The Great Northern method of supplying cars to S. P. and S. has been recognized by the Car Service Division of the Association of American Railroads and when a service order has been issued directing movement of empty cars to the Great Northern it has been understood—

Mr. Maguire (interrupting): Just a minute. Not understood, but stated.

The Witness: Understood, and the policy has been consistently followed.

A. (Continuing) —that such order contemplated Great Northern supplying S. P. and S. with adequate and reasonable proportion of cars received by the Great Northern. [fol. 2976] The Northern Pacific has followed the same practice.

By Mr. Torinus:

Q. Mr. Irwin, has the Great Northern in supplying cars for the S. P. and S. to meet the needs of shippers on the S. P. and S. System lines followed any different practice than the practice it follows in the seeing to the needs of the shippers on its own system?

Mr. Maguire: That is objected to. That is an argumentative conclusion. I think the facts can be stated whether every effort is made to satisfy the needs of the shippers on the S. P. and S. without comparing them to the Great Northern.

Mr. Torinus: I am just asking if there is any difference. I am not asking—

Mr. Maguire (interrupting): That is a mere matter of semantics there, whether you are asking whether it is the same or whether it is different, why, the same answer comes in here, and that is what I am objecting to.

Mr. Torinus: If there are any differences, I would like to have them stated in the record.

Mr. Maguire: But I don't think, Mr. Examiner, that the question whether the Great Northern treats S. P. and S. shippers the same as it treats its own shippers is at all material here in connection with his testimony. The question is what car supply does the Great Northern give to the S. P. and S. with respect to the needs of its shippers. Now, counsel is arguing the rest of it without the witness arguing it, and that calls for an argumentative conclusion, [fol. 2977] these comparisons, every one of these.

I am going to come out very frankly about this thing. It has been the policy of the gentlemen on the other side of the table here at all points to, not only during the hearing by leading questions, but in the inevitable conferences which precede testimony, the whole tone of the thing has been an argument that the S. P. and S. is just a part of the Great Northern, and so that every witness has had to be cautioned and there has had to be objections because that argument, which is properly one which should be indulged upon by counsel on a factual basis, is also participated in by the witnesses and by counsel and the witnesses in the hearing room, and that is what I am objecting to in this case. I know what their contention is; everybody knows that. But I think that when a witness is on the stand that this matter should be restricted to factual data rather than argumentative comparisons.

Exam. Dishman: Can you get at it, Mr. Torinus, without making comparisons?

Mr. Torinus: I have just asked him if there is any difference. I think that calls for a factual answer, and it not only goes to the exact manner in which the S. P. and S. is supplied with cars, but it also goes to the question of common management or control, which has been a subject of a great deal of testimony so far in the case.

Exam. Dishman: Your question that you are now asking [fol. 2978] the witness is if there is any difference in the treatment, is that right?

Mr. Torinus: Any difference in the method of supplying cars by the Great Northern System to the S. P. and S. System lines to meet the needs of shippers on that line.

Exam. Dishman: You may answer.

A. There is no difference. The Great Northern furnishes cars to S. P. and S. to the best of its ability, just as it does to shippers on its own lines.

Exam. Dishman: All right.

By Mr. Torinus:

Q. Mr. Irwin, does the S. P. and S. place orders for cars with the Great Northern from time to time?

A. It does. It places orders specifying the type and size and class and the capacity of the cars that S. P. and S. anticipates will be required for daily loading on system lines.

Q. Does the Great Northern receive similar car orders from any other railroad?

A. I can't answer that question in detail. I know, of course, the usual methods of returning cars to home lines and loading them in the direction of home and of moving cars as required by car service order.

Q. What I was asking is whether any other railroad regularly places orders for cars with the Great Northern, specifying the type, size, class, and capacity of cars it would require for each day for loads on its line?

[fol. 2979] A. Not to my knowledge.

Q. Do you know, Mr. Irwin, whether or not the S. P. and S. has any substantial investment in freight car equipment of its own? I am not asking you for an exact figure because there will be further testimony in the record on that subject.

A. It has an investment in freight car equipment of its own, but nothing in comparison with what it would require if it were obliged to furnish cars of its ownership for its loading without being able to rely on receiving cars from Great Northern and Northern Pacific as it now receives them.

Q. When the Great Northern receives these orders for cars from the S. P. and S. how does it supply the S. P. and S. with cars? Does it deliver some cars directly to the S. P. and S. at Spokane, for example?

A. Most of them that are supplied are through direct delivery from Spokane. There are, in fact, three sources of supply: that from Spokane being the principal one; second, cars reaching the Portland, Vancouver, Washington, area, with loads from Great Northern are made available to S. P. and S. for reloading, the S. P. and S. performing the terminal service for Great Northern in that terminal area. That practice in itself furnishes a substantial number of cars to the S. P. and S., although I have no figures on what proportion it would be. Obviously it would be quite small compared with those furnished directly through Spokane. Then the third source, and a really minor one, is cars received on the Great [fol. 2980] Northern from the south at Bend, Oregon, which the S. P. and S. or its subsidiary, Oregon Trunk, could use for reloading.

Mr. Torinus: Mr. Golden has one or two questions in the nature of direct.

Direct examination.

By Mr. Golden:

Q. Mr. Irwin, do you know whether the distances shown on your Exhibit No. 55 are from depot to depot or freight terminal to freight terminal?

A. Without knowing with certainty, I am quite sure that they are from depot to depot because that is the customary basis of reporting mileages.

Q. With regard to the Northern Pacific, is its Minneapolis terminal directionwise east or west of the depot?

A. On Exhibit 55 mile naught is at St. Paul, and I know that our own mileage distances start from St. Paul Union Depot, which is quite another thing from the mileage of any intermediate freight yard.

Q. I only intended to ask, Mr. Irwin, whether the

Northern Pacific freight terminal, if you know, is east or west of Minneapolis.

A. If you consider Northtown your freight terminal for Minneapolis, that is west or north of Minneapolis.

Q. What about the Northern Pacific's freight terminal at Spokane? Is it east of the depot?

A. East.

[fol. 2981] Q. As a matter of fact, it is not in Spokane, is it, or—

A. (Interrupting) It is east of the depot at Park Water, Yardley.

Mr. Golden: That is all.

Direct examination.

By Mr. Rockwood:

Q. Mr. Irwin, may I ask one or two questions? To what extent does the Great Northern engage in the practice of hauling empties west from Minnesota Transfer for eastbound loads from Pacific Coast states?

A. Would you repeat your question, please?

(Question read.)

By Mr. Rockwood:

Q. Haul from Minnesota Transfer westbound to Pacific Coast states for return loads eastbound?

A. That is a constant practice of the Great Northern.

Q. Is there ever an occasion when a solid train of empties will ever be run westbound out of the Twin Cities?

A. Yes.

Q. In supplying the S. P. and S. with cars, as you have described, are some of those cars hauled all the way empty from the Twin Cities to Spokane?

A. They are.

Q. Is the number of cars to be supplied to the S. P. and S. taken into consideration in determining the volume of westbound empty movement out of the Twin Cities to Spokane?

A. Yes, it is.

[fol. 2982] Mr. Rockwood: That is all I have.

Mr. Torinus: You may cross-examine, Mr. Maguire.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

We will recess for lunch and resume at 1:45.

Whereupon, at 12:17 p.m., a recess was taken until 1:45 p.m. of the same day.)

[fol. 2983] AFTERNOON SESSION 1:45 p.m.

Exam. Dishman: The hearing will come to order.

Mr. Torinus: Mr. Examiner, before Mr. Irwin is cross-examined, I would like to ask a few questions in the nature of direct which I inadvertently overlooked asking Mr. Irwin before lunch.

Exam. Dishman: All right.

Direct examination (continuing).

By Mr. Torinus:

Q. Mr. Irwin, are you familiar with Exhibit 46, which was introduced in evidence by Mr. Lear showing the cars which would become susceptible to Milwaukee solicitation should it be successful in this case, based upon the traffic handled by the Great Northern for the year 1953 between the points involved?

A. I am.

Q. Mr. Irwin, were you requested to make a study of the effect on Great Northern service which would result if one-third of the total number of cars susceptible to Milwaukee solicitation should it be successful in this case as shown on Exhibit 46 were actually diverted away from the Great Northern?

A. I was requested to make such a study and that was done.

Q. And I am referring, Mr. Irwin, to the figures on page 2 of Exhibit No. 46 showing in total 19,641 cars east bound and 7,651 cars west bound, aggregating 27,292. Now, Mr. Irwin, will you describe just how you made a study to determine what effect the loss of one-third of that traffic would have on the Great Northern's service?

[fol. 2984] A. The study was based on east bound traffic received from S. P. and S. at Spokane, Hillyard, in interchange and on the one-third basis previously mentioned, information was furnished each division superintendent of the main line division over which these trains would operate in order that he would redispatch the trains moving in the selected test months, February and October, 1953, to determine what effect the reduction of that number of cars would have in his transportation effort, that is to say, in the number of east bound trains he would have run had it been known that the number of cars would not be available for east bound movement.

Q. Then did you select certain months for the purpose of a test and pick out of these total cars, these total east bound cars that you have mentioned, those cars that were actually interchanged with the Spokane, Portland and Seattle during those test months?

A. That was the situation.

Q. And what months were those, Mr. Irwin?

A. February and October 1953.

Q. And why were those months selected?

A. It was considered that they would be representative, February of a relatively low volume of traffic, and October of a relatively high volume of traffic, so that the combined results would be indicative of the effect on Great Northern transportation with that volume of traffic loss.

[fol. 2985] Q. Now, this study which you and your superintendents made under your direction, was that made on the assumption that one-third of those 19,000 cars would be loss for east bound movement?

A. It was.

Q. Was any study made with respect to the potential loss of any portion of the west bound movement?

A. No such study was made west bound.

Q. So that the result of your study just embraces the potential loss of east bound traffic?

A. That is correct.

Q. Will you tell us what that study revealed, Mr. Irwin?

A. It revealed varying effects as the business moved eastward. The first division over which that business would move is the Kalispell division, shown in red on Exhibit 49, next the main line portion of the Butte division, shown in green on the same exhibit, next the main line portion through New Rockford, Nolan, and Casselton, of the Minot division, shown in yellow on that Exhibit 49, and finally the main line portion of the Willmar division shown in red on Exhibit 49. The results as determined by our check of train sheets and a consequent redispatching of the main line east bound trains during those months with a reduction of one train on the Kalispell division in February 1953 and one in October 1953, and similarly on the Butte division.

Then on the Minot division the results become more [fol. 2986] pronounced, nine trains less on the Minot division in February and seventeen less in October. Then on the Willmar division seventeen less in February and sixteen less in February.

Q. Wait a minute. Willmar division seventeen less in February.

A. And sixteen less in October on the sub-division from Breckenridge to Willmar, and eighteen between Willmar and Minneapolis in February.

Mr. Maguire: Eighteen which?

The Witness: I beg pardon?

Mr. Maguire: Eighteen in February or eighteen in October?

The Witness: To repeat, Willmar division in February seventeen fewer trains from Breckenridge to Willmar and seventeen fewer trains Willmar to Minneapolis.

Then in October sixteen fewer trains Breckenridge to Willmar and eighteen fewer trains Willmar to Minneapolis.

By Mr. Torinus:

Q. Now, you use the phrase fewer trains, what does that mean?

Mr. Maguire: Fewer.

A. Well, smaller number, if that will clarify it.

By Mr. Torinus:

Q. Mr. Irwin, how do you account for the fact that the reduction in train service lines west of Williston is not comparable to the reduction in train service lines east of Williston, as indicated by your study?

A. Because of the difference in the branch line situation. There is relatively a small amount of branch line business [fol. 2987] moving into the main line between Spokane and Williston. The line from Bainville to Opheim, also the line from Richey on the one hand and Watford City on the other to Snowden on the Butte division, both feed into the main line in branch line trains, and are combined with main line trains at Williston, so that Minot division has more cars and more tonnage to move eastbound than came into Williston off the Butte division main line in main line trains. Similarly with the large number of branch lines in North Dakota some of that volume of business moves into the main line and into main line trains at Minot and other and additional business moves to the main line and into the main line trains at Breckenridge, so that an eastbound train from Breckenridge contains more cars or has available to it more cars and more tonnage than moved eastbound out of Williston.

Q. Is this a true description of the situation, Mr. Irwin? With the reduction in the volume of eastbound business, indicated by your study, you could use the cars coming off the branch lines at these main line junctions to fill out regular trains rather than running extras, as you did in 1953 under the volume of tonnage that you then handled from S. P. and S. points and from those branch line points?

A. That is the situation, that is what would happen.

Q. As I understand it, you weren't requested to make any computation of the effect of that reduction on operating expenses, were you, Mr. Irwin?

[fol. 2988] A. No, I was not.

Q. And you have made no such computation?

A. That is correct.

Mr. Torinus: You may cross-examine.

Cross examination.

By Mr. Maguire:

Q. Mr. Irwin, in the early part of your testimony you said that 58.6 per cent of the line west of Shelby, Montana, has been improved by line or grade revisions?

A. Yes.

Q. And I think there were other improvements that you mentioned at the time, too?

A. Yes.

Q. Do you mean that one or more of these different improvements has been placed in effect upon this 58.6 per cent or that all of these types of improvements have been placed on that per cent?

A. Generally speaking, improvements of all classes have been made within the compass of the main line as it now exists, if that answers your question.

Q. As to this 58.6 per cent of the line west of Shelby, that is what I was talking about. You mean that one or more of these different types of improvements have been made on 58.6 per cent of your line?

Mr. Torinus: What do you mean by "these different types of improvements"?

By Mr. Maguire:

Q. Do you understand what I am talking about, Mr. Irwin?

[fol. 2989] Mr. Torinus: I want that clear in the record.

Mr. Maguire: The record is clear on it.

Mr. Torinus: It isn't clear to me. What do you mean by these different types?

Mr. Maguire: If you will look at the record you will find that it does.

I don't propose to be interrupted as I am every time I undertake to examine one of Mr. Torinus' witnesses.

Exam. Dishman: Does the witness understand the question?

By Mr. Maguire:

Q. You know what we are talking about, Mr. Irwin?

A. I know what you are talking about in the way of improvements, Mr. Maguire, and I have tried to answer that by saying that wherever a part of the original line is still in service it has been improved with whatever class of improvement we were making generally, along with making similar and identical improvements on all of the changes of line which have been made and are now in service.

Q. Maybe we don't quite understand each other. I am trying to connect up these various classes of improvements, line revisions, grade revisions.

Mr. Maguire: Now you are getting it, Mr. Torinus.

By Mr. Maguire:

Q. As you mentioned in your direct testimony on this 58.6 per cent, the line west of Shelby—I am not trying [fol. 2990] to trap you, I am trying to clarify this—Mr. Irwin, do you mean that one or more of those different type of improvements as appropriate have been made within that scope of the line?

A. Surely.

Q. Now, I wish to direct your attention to your testimony about what performance could be made with a diesel locomotive of four 1,500 horsepower units and 6,000 horsepower altogether, of course, and that you can haul in either direction with one of these four-unit locomotives 5,000 tons between Wenatchee and the Twin Cities, or if you come over east to Havre, Montana, you can haul with that four-unit diesel 7,500 tons without helper service?

A. Yes.

Q. I am trying to find Havre on your condensed profile here.

A. I can do that.

Q. Eastbound over the route between Wenatchee and the Twin Cities your heaviest grade is 1.8 per cent, isn't it?

A. That is correct.

Q. And that is at about 920 miles west of the Twin Cities, is it not, as shown on your condensed profile?

A. If you find a station Essex, it is at the foot of the 1.8 grade.

Q. And that grade runs for about 15 miles, doesn't it?

A. Just about. Eighteen as a matter of fact.

Q. What type of diesel locomotive do you have in mind that can make this performance?

A. We have helper service from Essex to Summit.

[fol. 2991] Q. Yes, I understand that you do, but you said that you could handle a train, you could handle 5,000 tons eastbound, or either direction, without helper service, with a four-unit diesel, aggregating 6,000 horsepower. What type of diesel did you have in mind that could perform that work?

A. If my testimony stated without helper service, it was incorrect with respect to this segment of line, Essex to the Summit. We regularly operate diesel helper service with our trains hauled by a four-unit diesel between Havre—well, I will take it the other way, between Whitefish and Havre.

Q. Maybe we might simply find it in this way, what is the maximum grade at which you could haul a trainload of 5,000 tons with a four-unit diesel with the aggregate horsepower of 6,000 without helper service?

A. We do.

Q. Yes. But is that about the maximum grade at which you could haul 5,000 tons?

A. Without helper service?

Q. Without helper service.

A. Yes, I think that that is just about it.

Q. One per cent?

A. Yes.

Q. So that wherever your condensed profile shows grades in excess of one per cent you would have to have helper service to haul 5,000 tons?

[fol. 2992] A. Any of the profiles do not at any point show grades in excess of one per cent between Minnesota Transfer and Spokane except east bound between Essex and Summit, the points we were just discussing.

Q. By the way, I notice in here that you do not show your percentage of grade in that peak in your condensed profile which is just east of your summit, which is around about, is bisected by the line indicating 1,100 miles.

A. If you will look at the other exhibit for that, Mr. Maguire.

Q. Which other one is that?

A. Fifty.

Q. And where will I find it on there?

A. On the district between Cut Bank and Whitefish the ruling grade west bound is one per cent and the east bound is eight tenths per cent. Then we use helper service Nimrod to summit.

Q. What does that mean on Exhibit 50 where it says 1.8 helper grade, Nimrod to summit?

A. I have been talking about Essex to summit because Essex is the point where the helper was based for many years, but the portion of the grade from Essex up to Nimrod is less than 1.8 per cent so that the helper service is operated in that particular segment just because Nimrod is not an efficient place to base it for operating purposes.

Q. Yes, but what do those words mean, "1.8 helper grade Nimrod to summit"? Does that mean that is a 1.8 per cent grade?

[fol. 2993] A. Yes.

Q. From Nimrod to the summit?

A. Yes, that is correct.

Q. And that is on east bound movement, isn't it?

A. That is east bound movement.

Q. Then I think we got ourselves to working a little bit here. Did you compute the performance of this four-unit diesel upon the capabilities of any particular type of diesel?

A. I may ask you to amplify that question. Most of our diesels are electromotive diesels. We do have some others but I am quite sure that none of the others are in service in that area, and those main line diesels operated in that service are the electromotive G.P.7's, general purpose.

Q. It is an E.M.D., it is called?

A. Yes, sir.

Q. G.P.7?

A. Yes, sir.

Q. What is the gear ratio on that type?

A. I am not enough of a mechanical man to answer that. I can furnish it but I haven't the information. If I may, to interpose, I will say that we regularly handle 5,000 tons east bound with that combination haul on power without helper service on one per cent grades.

Q. I see. With regard to the description of the various terminals—I don't intend to bat that around with you in [fol. 2994] detail, of course—I wonder if I could get kind of a summarization from you. At practically all of the terminals which you described you said that there were engine house and car repair facilities, at least?

A. Yes.

Q. Could you point out to us the stations where you maintain so-called diesel houses?

A. We have a diesel shop at St. Paul. As testified, the principal diesel shop on the system is at Havre, which is equivalent to a back shop if we were talking about steam locomotives. We have just recently installed a diesel shop at Hillyard, Spokane, which is almost equivalent to the one at Havre, because it will take care of practically everything required in the way of repairs on the west end of the railroad. Likewise, we have a diesel shop at Great Falls, which is perhaps a junior back shop, it takes care of the diesels on the Butte divisions operating south of Havre and Shelby. Then at practically every main line terminal. We have diesel facilities for servicing and running repairs in most cases converted from sections of the former steam locomotive roundhouse.

Q. Thank you, that is just what I want.

I was interested in the comparison of your total gross ton miles from the Twin Cities west, during the years 1943

and 1953 and 1954, 1943 was one of the all-time peak years so far as handling traffic was concerned, was it not?

[fol. 2995] A. Yes.

Q. And since then, ten years later, your gross ton miles had fallen off only a little bit over one-tenth of one per cent under 1943, hadn't they?

A. For these selected divisions.

Q. Yes. And in 1954 they were just about one per cent under the peak of the four years. Do you know of any railroad in the United States which is operating up to its capacity?

A. I don't know of any in, we will say, 5,000 road miles or above that would be operating today to its potential capacity.

Q. As a matter of fact, that is one of the difficulties of the railroad industry, isn't it, they are not operating up to potential capacity?

A. It surely is.

Q. From your general knowledge would you not say that your experience in the diminution or the decrease in your traffic density along your main line or the route from the Twin Cities west, that your experience has been quite a fortunate one so far as the comparison of your present traffic density with your war-time traffic density, in view of the figures we have given?

A. Yes.

Q. I think you made a comparison also, Mr. Irwin, between the extreme grades west bound over the lines of the Great Northern and the Northern Pacific and the Milwaukee, and the Great Northern compared very favorably in [fol. 2996] that respect, as I recall, with the other two lines. Would you do the same thing east bound as to your extreme grades?

A. I know our extreme grades east of Spokane is 1.8 per cent as previously discussed.

Q. And that compares with 1.7 on the Milwaukee and 1.9 on the Northern Pacific, is that correct?

A. I believe it is, bearing in mind that we do it only once.

Q. You stated with regard to car supply, Mr. Irwin, that you did not know of any other of your connections who make requests upon you for empty equipment, regular requests

upon you, other than the S. P. and S. You know of Spokane International Railroad, do you not, that connection with the Great Northern at or near Spokane, Washington?

A. I know of it.

Q. Neither the Great Northern nor the Northern Pacific owns any interest in the Spokane International?

A. That is correct.

Q. Isn't it a fact that the Spokane International regularly places orders with the Great Northern for cars for loading out via Spokane and the Great Northern?

A. Possibly so. I wouldn't know that of my own knowledge.

Q. Well, you are familiar generally with the operating conditions upon your railroad and your car supplies?

A. And I know, too—

Q. (Interrupting) Now, just a moment. You have [fol. 2997] answered my question.

Mr. Torinus: Just a minute, Mr. Irwin, had you completed your answer?

Mr. Maguire: Mr. Irwin, is volunteering information that I didn't ask for.

By Mr. Maguire:

Q. Were you volunteering something or answering?

Mr. Torinus: I wanted to know if he has completed his answer.

Mr. Maguire: I want to know if he is volunteering something or answering the question.

Exam. Dishman: Were you explaining your answer, Mr. Witness, or have you answered?

A. I am simply repeating that I do not know that of my own knowledge.

By Mr. Maguire:

Q. That completes your answer?

A. Yes.

Q. Well, do you know of your own knowledge whether or not any other railroad makes regular requests upon the Great Northern, then, other than the S. P. and S. for equip-

ment for outbound loading? Do you know whether or not there is any such thing or whether there isn't or do you know nothing of your own knowledge as to other railroads as to other connections?

A. The Pacific Coast Railroad, a small—

Q. (Interrupting) Wholly owned subsidiary?

A. (Continuing) —wholly owned subsidiary undoubtedly looks to the Great Northern for car supply. I would not know of any other.

[fol. 2998] Q. You have no personal knowledge one way or the other, do you?

A. In the matter of detailed car supply, no.

Q. Nor as to the manner in which they place orders for car supply?

A. No.

Q. Now, when there were some questions asked you as to the empty movement west bound, movement of empty cars west bound, and you stated that some cars which were afterward turned over to the S. P. and S. were hauled empty, some of them as far as from the Twin Cities west bound?

A. Yes.

Q. Isn't it a fact that your empty movement at least upon all of the trans-continental lines from the Union Pacific, including the Union Pacific, up north, I am talking about the Union Pacific, Great Northern, Northern Pacific, and Milwaukee, thence your empty movement is predominantly west bound in all cases, because cars are brought out there in that country for loading east since your prevailing loaded movement is east bound from the Pacific Northwest, isn't that true as to all four of the railroads?

A. I know that to be the case on the Great Northern, because of similar general conditions I would expect it to be the case on the other lines you mentioned.

Q. You have taken part in a number of hearings, have you not, before regulatory bodies?

A. Yes.

Q. And that is accepted almost as gospel, is it not, that [fol. 2999] situation for the Northern lines, that is, the four Northern railroads?

Mr. Torinus: Accepted by whom, Mr. Maguire?

Mr. Maguire: Accepted by everyone in the railroad business.

Mr. Torinus: If you know, Mr. Irwin, answer that, if you know.

A. I don't know of my own knowledge but I would accept that as being a correct statement of the general conditions.

By Mr. Maguire:

Q. Well, of course, in your official position you don't go around with a pair of blinders on looking only at the Great Northern, do you? You have to look at your competitors, don't you, and know pretty much what is going on on their railroads?

A. I try to do that.

Q. And from the knowledge that you have gained in that way you know that what I said is a fact, too, don't you?

A. I accept that as a correct general statement, yes.

Q. You kind of got me lost a little bit here with your talking about the reduction in the number of trains. As I understand it, on the Butte division and the Kalispell division, you have comparatively little feeder trackage or branch line trackage feeding into the main line as compared to the Minot and the Willmar divisions, is that one basic fact?

A. Essentially so. The Butte division has considerable tonnage feeding into the main line at Havre for moving over the segment of Butte division main line between Havre and Williston. But that is a favorable east bound grade, so [fol. 3000] that that additional tonnage coming into main line trains at Havre does not present a particular hauling problem between Havre and Williston.

Q. The corollary to that, then, is that east of Havre you are running your trains with much greater tonnage than you can in certain other portions of your line, so that the subtraction of the tonnage which you assume for the sake of argument would be lost to the Milwaukee would just be taken out of trains that are already in existence, is that right, already running? In other words, it would not reduce the number of your trains because you don't have so many trains?

Mr. Rockwood: So I can follow you, you mean in what area?

Mr. Maguire: He knows what I mean.

By Mr. Maguire:

Q. I am talking about the areas east of Havre on the Butte division.

Mr. Rockwood: I am trying to follow you, too, you mean you—

Mr. Maguire (interrupting): I am not going to have you cross-examine me. I will rephrase my question.

Mr. Rockwood: Please do.

Mr. Maguire: And if that doesn't soak in, please ask me.

Mr. Rockwood: Please do, we are all entitled to know what you are talking about, Tom.

Mr. Maguire: You want in on this, all right.

By Mr. Maguire:

Q. Because of a favorable grade eastbound you do not run as many trains during any period per day or per week [fol. 3001] because you can put heavier tonnage on a single train?

A. As far east as Williston?

Q. Yes, as far east as Williston.

A. Yes.

Q. And so therefore you would just take off the S. P. and S. tonnage which you expect to lose to the Milwaukee, you would take that off those existing trains, wouldn't you?

A. Primarily.

Q. Now, when you get east of Williston you have a number of extra trains in there operating at the present time which are handling your branch line traffic off of the numerous branches that come into your Minot division? You have a number of extra trains or trains which are handling predominantly branch line traffic, is that correct?

A. I think so.

Q. So that if by reduction of tonnage in this train which has come over the Butte division into Williston you are able

to make more room in the train, in that train, which is, as I say, coming off the Butte division, you are able to make more room, by loss of the S. P. and S. tonnage you can take some of this branch line tonnage and cut in the freights, is that the theory of it?

A. I am afraid that I will have to re-dispatch this train that you are operating.

Q. Maybe you will, I am not a very good dispatcher. What you are doing, maybe I am trying to be a little bit too [fol. 3002] professional about this without knowing anything about it, but are you just simply, in view of the loss, the theoretical loss of tonnage on trains which have come through carrying S. P. and S. tonnage from the west, in view of that loss you are filling up those scheduled trains with tonnage off your branches?

A. So long as it does not interfere with the operation of a scheduled train, a symbol or time freight, if you please.

Q. That is why you have, however, you have made such adjustments in your theoretical study, and you have been able to cut off nine trains in the Minot division in February and seventeen trains in October, it is because you are taking that branch line tonnage and putting it on to one of your scheduled trains, your symboled trains, is that right?

A. But that is not the whole of it.

Q. Suppose you tell me the rest of it, then, as to how you reach these nine and seventeen and seventeen and sixteen and seventeen and eighteen trains.

A. As I stated, the business was re-dispatched following a study of the train sheet to determine how it actually moved when the trains contained this S. P. and S. business. The approach to the re-dispatching was of this order, that the S. P. and S. business was all long haul traffic and of a character that normally moves in scheduled or symboled trains, therefore the amount of traffic represented by the cars comprising this one-third was moved right along, without any [fol. 3003] delay, and this branch line business that we have been discussing was used as a fill for an additional train running on a schedule, whereas if there had not been this one-third, which we have identified, moving at that time, another train would not have run at that time but the other branch line business or other fill of whatever nature which

could properly have moved in the regular fashion but without moving in a symbol train, it would have been held for that purpose. Consequently the lack of business representing this one-third enabled the reduction of a train and to the extent of nine or seventeen or whatever it might be as a result of re-dispatching all of the business handled in that month east bound.

Q. Well, while there is a difference in the number of words, I think we both think the same thing about it.

Exam. Dishman: Will you explain for the record what you mean by symbol train?

The Witness: Operating on a published schedule, a schedule that has an established departing and arriving time at the various terminals, much the same as a passenger train operates on a schedule.

By Mr. Maguire:

Q. Let's discuss your testimony very briefly, I hope, on refrigerator car ownership and control. As a matter of fact, so far as the operations involved in this particular proceeding are concerned the refrigerator car plays a very minor role, does it not?

Mr. Torinus: I will object to that question. I don't know [fol. 3004] what you mean the operations involved in this proceeding.

Mr. Maguire: I mean traffic between the S. P. and S. and the Great Northern, or Northern Pacific or Milwaukee.

By Mr. Maguire:

Q. You understand what I mean, Mr. Irwin?

Mr. Torinus: Are you asking Mr. Irwin to characterize your case, something you put in?

Mr. Maguire: I am asking him to characterize the traffic here. If you will just be quiet and quit stopping me without making objections, we will get along faster.

Mr. Torinus: If you want him to characterize the traffic he studied, I suggest you ask him that.

Mr. Maguire: Read the question, Miss Reporter.

(The last question was read.)

Mr. Torinus: I object to the question. I think it should be rephrased. I object to the question as indefinite. If he wishes to ask Mr. Irwin about some particular traffic that he has studied, I have no objection.

Mr. Maguire: Could I have a ruling upon the objection?

Exam. Dishman: I just wonder if we could make the question definite. If you could just state what—

Mr. Maguire (interrupting): I can do that, Mr. Examiner.

By Mr. Maguire:

Q. You have expressed familiarity with Mr. Lear's Exhibit No. 46, have you not, on your direct examination?

A. Yes.

Q. And a very small percentage of the carloads of [fol. 3005] different commodities mentioned in there are refrigerator car traffic, isn't that true?

A. Yes.

Q. For example, turn to page 4, what commodities listed under the different commodity groups there would ordinarily move in refrigerator cars? Start with products of agriculture.

A. Fruits and berries, potatoes, vegetables.

Under animals and products, meats and packinghouse products, all of them, as a matter of fact, poultry, seafood.

Q. That's about it, is it? And on that page under competitive traffic there are the cars of fruits and berries, no potatoes other than sweet, four vegetables, one fresh meats, one packinghouse product, well, five animals and products, so there are sixteen cars out of three hundred twenty-four in group one, I mean in competitive traffic.

A. Might I interpose to say that I believe that the Milwaukee is quite familiar with the growth of traffic in the Columbia Basin area and is participating in the class of traffic that is growing and moving from that area in refrigerator cars.

Q. Well, that is an interesting observation but I don't see what it has to do with the case.

Mr. Maguire: I move that that observation be stricken, Mr. Examiner.

Exam. Dishman: As not being responsive?

Mr. Maguire: It was not responsive to a question, and it [fol. 3006] hasn't anything to do with this case, anyway.

Exam. Dishman: All right, it may be stricken.

By Mr. Maguire:

Q. And if you will turn to page 6 of Mr. Lear's Exhibit 46 you will find no commodities in group two originating on the S. P. and S. which would be ordinarily or normally hauled in refrigerators, that is true, isn't it?

A. That is correct.

Q. And let's go to page 7 of Exhibit 46. Out of 952 cars which show in the first column under heading three, total traffic, you have two cars of pears, four cars fruits and berries, fresh frozen, and that's all, isn't it, that would ordinarily move in refrigerator cars?

A. Yes.

Q. And on page 8, which is group four under Mr. Lear's definitions, of the total traffic, both competitive and non-competitive, which total, as you will notice at the bottom of the page there, 1,862 cars—do you find that?

A. Yes.

Q. You will find one car of apples, twenty-nine cars of pears, nineteen cars of fruits and berries, fresh frozen, nine cars of potatoes—

Mr. Torinus (interrupting): Will you tell us what column you are looking at and where those figures are?

Mr. Maguire: As I said before, if you would just listen you wouldn't have to interrupt me so much.

[fol. 3007] Mr. Torinus: Would you explain, please, I am afraid I missed that, Mr. Maguire.

Is that column M you are talking about?

Mr. Maguire: That is column M.

Mr. Torinus: Thank you.

Mr. Maguire: Where was I before I was interrupted here?

(Question read.)

Mr. Maguire: I am still in column M, Mr. Torinus, on page 8.

Mr. Torinus: Thank you.

Mr. Maguire: Are we clear where I am?

By Mr. Maguire (continuing):

Q. —one car of vegetables fresh N. O. S., not frozen, forty-five cars of vegetables frozen, three cars of fresh meats, four cars—I am willing to throw in for just a little extra here—of cooked, cured, dried and smoked meats, and two cars of packinghouse products, three cars of poultry, five cars of seafood, out of eighteen hundred sixty-two, you notice those figures. Would you say, then, that the ownership of refrigerator cars is a very material issue in this case?

Mr. Torinus: What is that question, Mr. Maguire?

By Mr. Maguire:

Q. Would you say that the relative ownership of refrigerator cars is a substantial, rather than material, issue in this case?

Mr. Torinus: Now, Mr. Maguire, I object to the—

Mr. Maguire (interrupting): Just a moment, just object [fol. 3008] to the examiner and stop addressing me, would you mind?

Mr. Torinus: I will address my objection to the examiner but I would like to have you hear it, too.

Mr. Maguire: I will be hearing it.

Mr. Torinus: I object to Mr. Maguire asking him based on the summarization of those pages because he has very adroitly skipped page 10 for one reason or another. Whether Mr. Irwin thinks the traffic in perishables which might move in refrigerator car amounts to a substantial issue in this case is wholly immaterial.

Mr. Maguire: I may have inadvertently skipped page 10, Mr. Torinus, and not adroitly. I think, I agree with you, there is no sense of my getting into an argument with Mr. Irwin.

Mr. Torinus: You did skip page 10, did you not?

Mr. Maguire: Yes, I did, and I am very, very sorry.

Exam. Dishman: Do you withdraw the question, Mr. Maguire?

Mr. Maguire: I withdraw the question, yes.

By Mr. Maguire:

Q. Mr. Irwin, to go back for a moment to the general question of the Great Northern supplying cars to other carriers, it is a fact that even without going to the Association of American Railroads that various other connecting carriers make requests, various carriers make requests upon each other for cars periodically, do they not, or occasionally?

A. Yes.

Q. And your distinction in your mind was that other [fol. 3009] connecting railroads, the general practice, they do not make them as often as the S. P. and S. does nor as regularly as the S. P. and S., is that the distinction in your mind?

A. Most assuredly. The requests from other lines would be negligible compared with the number of cars we furnish the S. P. and S.

Q. Because other lines do own some equipment of their own, I mean a larger proportion, in proportion to their mileage, than the S. P. and S. does, that is true?

A. Yes.

Q. Now let's go to your Exhibit No. 52. Are these system operating statistics?

A. They are.

Q. And so far as the Great Northern is concerned I note a very material shorter average haul per ton of revenue freight on the Great Northern than there is on either the Northern Pacific or the Milwaukee. Does your very heavy involvement in the ore traffic which is a short haul account for this when you put it into your system figures?

A. Quite substantially, I should say.

Q. What is your average loaded haul on your ore movement?

A. It is just about one hundred miles. I couldn't state it with complete accuracy off-hand.

Q. And your ore operations—have you any figures available as to the percentage of your total gross ton miles that [fol. 3010] is accounted for by your ore traffic?

A. In such a year as '53, which was a heavy year, it would be nearly 50 per cent of gross ton miles.

Mr. Torinus: Excuse me, just a minute, please.
Mr. Irwin, do you have in mind ton miles or tons?
The Witness: Tons.

By Mr. Maguire:

Q. Then has 50 per cent of total tons of revenue freight or of all freight carried consisted of ore shipments?
A. Substantially.
Q. Your operation in connection with your ore shipments is beneficial in this respect, that your loaded movement is downhill and your empty haul, return haul, is uphill, is it not?
A. Substantially so. We do have some adverse grade against loads.
Q. But generally the prevailing grades which are favorable, are favorable to your loaded movement?
A. Yes, providence was kind to us.
Q. Yes, and you are to be congratulated, too, and envied.
That, of course, is not in the area between the Twin Cities, on the main line between the Twin Cities and Spokane, is it?
A. No, it is not.
Q. And so to the extent that your system operating results are rendered more favorable by your ore operation, then it does distort the picture so far as your operating costs and operating data between the Twin Cities and Spokane are concerned, do they not?
[fol. 3011] A. We have carefully refrained from including any of the ore traffic gross ton mile figures in the testimony that I have given.
Q. Then these are not system figures?
A. I am not through.
Q. Oh, I beg your pardon.
A. For the purpose of showing our traffic volume over that portion of the system that is involved in this case.
Q. Where do you have any figure showing traffic volume over the portion of the system involved in this case other than those general figures you gave?
A. Gross ton miles.
Q. Well, of course, I understand that that figure—
A. Yes, that was correct.

Q. I am talking about your Exhibit 52 where you compare operating results of those on Great Northern with the Northern Pacific and the Milwaukee.

A. Yes.

Q. You have excluded the results of your ore operation from this exhibit, have you?

A. We haven't made any attempt to do so. These are system figures.

Q. Then let's get back to this other question, that your operating results from your—and when I am talking about operating results I mean expenses and revenues and so forth—of your ore traffic are very favorable and to that [fol. 3012] extent they do distort the picture from the crossed system figures—

Mr. Torinus (interrupting): I will object to that question. What do you mean the operating results are very favorable? That question is indefinite. What operating results are favorable?

Mr. Maguire: That is the strangest objection I have ever heard.

Mr. Torinus: I will object to the question as indefinite.

Exam. Dishman: Does the witness understand it?

By Mr. Maguire:

Q. You know what I mean, don't you, Mr. Irwin?

Mr. Torinus: I don't understand what you mean, and Mr. Rockwood said—

Mr. Maguire (interrupting): I am not talking to you and I am not talking to you and I am not talking to you any more than I have to.

Exam. Dishman: Do you understand what he means by the question or would you like it made more definite?

The Witness: In the first place, I disagree with the reference to distortion.

By Mr. Maguire:

Q. I don't mean distortion—

Mr. Rockwood (interrupting): Why don't you let him answer, Mr. Maguire? He starts to answer and—

By Mr. Maguire (interrupting):

Q. Are you through with that particular remark?

Mr. Rockwood: May I address the examiner, Mr. Maguire?

Mr. Maguire: I wish you would instead of me.

[fol. 3013] Mr. Rockwood: Mr. Examiner, may Mr. Maguire please be instructed to refrain from being so disciplinary with the witness to the extent of breaking in on a question before the witness has had a chance to answer?

Mr. Maguire: That is a ridiculous accusation.

Exam. Dishman: Let's proceed. We don't want to get a lot of that on the record.

Have you completed your answer?

The Witness: No.

Exam. Dishman: Well, go ahead.

A. There may be a difference of opinion as to the extent that our ore operations are favorable. It is true that in this exhibit the revenues and the expenses attributable to ore are included in the system figures, and no effort has been made to exclude them in order to segregate the portion of revenues and expenses attributable to the operation of the main line between the Twin Cities and Spokane. To whatever extent the ore operations are favorable or remunerative they aid the Great Northern in providing improvements in road and facilities over the entire system, not merely in the ore territory.

Furthermore, at the close of navigation, when the diesel locomotives used in ore service are released from that service, they are transferred to the main line, and during the closed period of navigation those locomotives aid materially in road and yard service in handling traffic in that [fol. 3014] portion of the railroad where we are not yet completely dieselized.

By Mr. Maguire:

Q. In other words, you make beneficent use of the profits that you derive from your ore haul?

Mr. Torinus: I object to that as argumentative.

Mr. Maguire: No, the witness has been arguing with me. I don't see why I shouldn't hand him back some of his own coin.

Mr. Torinus: He hasn't asked for a factual response. He has asked if we have made beneficent use of something. I don't know what he means and it is pure argument.

Exam. Dishman: Well, the objection is sustained.

By Mr. Maguire:

Q. Will you state whether or not you have made studies or studies have been made by your company as to whether your ore operation, the cost per ton mile, is less than the average of all of your traffic?

Mr. Torinus: I will object to that as immaterial. We haven't shown the cost of—

Exam. Dishman (interrupting): Well, he asked him if he had made a study. The witness may answer it.

Mr. Torinus: Well, it is still immaterial.

Exam. Dishman: He has asked him if he made it, so the witness can say yes or no.

A. I haven't made it and I don't know to what extent anyone else has made it.

By Mr. Maguire:

Q. But it is your general knowledge that your company's per ton mile on your ore traffic is less than it is [fol. 3015] on the average of all traffic of your railroad, isn't it?

Mr. Torinus: Well, now, just a minute.

Exam. Dishman: He asked him if it is general knowledge, so the witness may answer if he has any knowledge of it.

Mr. Torinus: How can he have any general knowledge if he has not made a study.

Exam. Dishman: If you have not made a study you may say so.

A. I could only say I assume that to be the case.

Exam. Dishman: But you don't know it of your own knowledge?

The Witness: I do not.

By Mr. Maguire:

Q. When you say you don't know it of your own knowledge, what knowledge would you have to have to be able to testify from your own knowledge, I want to know what you mean by that?

Mr. Torinus: I will object to that as immaterial. He says he does not know.

Mr. Maguire: He says he doesn't know of his own knowledge but assumes it to be true.

I want to know what he means by the term his own knowledge, Mr. Examiner.

Mr. Torinus: May I have a ruling on my objection?

Exam. Dishman: Well, the witness may answer if he—

A. (Interrupting) I haven't made such an analysis myself nor have I seen such an analysis made by anyone else.

By Mr. Maguire:

Q. But from your own knowledge—you are an operating [fol. 3016] expert of your company, are you not?

A. No, sir.

Q. You are not an expert? You are an operator of service of long standing of your company, are you not?

A. I agree.

Q. And you are familiar with operating conditions all over your railroad, aren't you?

A. Quite generally, yes.

Q. And certainly a gentleman of your standing, experience, and rank in your organization would know—

Mr. Torinus (interrupting): I object to the question as speculative, what he would know.

Exam. Dishman: Let's go ahead and finish the question.

Mr. Maguire: Mr. Torinus seems to have a Friday afternoon objection complex.

(Question read.)

By Mr. Maguire (continuing):

Q. —would know whether the cost of handling your ore traffic, is less than for the system traffic as a whole, now, you do know that, don't you, as a general matter?

Mr. Torinus: I object to the question as argumentative.

Exam. Dishman: Well, the witness may answer. I think the witness has knowledge.

Mr. Torinus: I think he has already answered. Whether he knows, Mr. Maguire has asked two questions, you said [fol. 3017] you know and then he said you do know.

Mr. Maguire: I am going to press this point because it seems to be a pretty sensitive one, Mr. Torinus.

Exam. Dishman: Let the witness answer, if he knows.

By Mr. Maguire:

Q. You know that to be a fact, don't you?

A. I take it that you are inquiring just with respect to operating expense?

Q. Yes.

A. Realizing that our investment in—

Q. (Interrupting) I am just inquiring as to operating expense, period, without any realization, speculation, or anything else, now, just stick to that.

A. We have millions of dollars invested in the facilities used in the ore service, and that investment is at work 365 days in the year, although the ore operation maybe tied up and ice 36 inches thick in Superior—

By Mr. Maguire (interrupting):

Q. I am going to interrupt you—

Mr. Torinus (interrupting): Just a minute, Mr. Maguire, you asked for the witness to continue.

Exam. Dishman: Let the witness finish and we can determine.

Mr. Maguire: The thing is this, Mr. Examiner, that this witness knows very well that return on the investment is not part of the operating expense and he has gone off into a question of idle investment. I am asking him about

operating expenses and he knows what I mean and that is what I'd like him to answer.

[fol. 3018] Mr. Torinus: I would like you to instruct Mr. Maguire to keep still until the witness completes his answer to the previous question.

Exam. Dishman: I would like to ask the witness, the answer you started to give, is that in direct response to the question in your authority?

The Witness: It was in order to clarify my understanding whether in the first instance Mr. Maguire was discussing operating expenses only.

By Mr. Maguire:

Q. I am talking about operating expenses only. And you don't have to tell me, you can ask me what I mean, Mr. Irwin, so let's go on from there.

Exam. Dishman: So could you give a response to the question?

Mr. Torinus: Might I ask that he be permitted to give an answer without being interrupted by counsel?

Exam. Dishman: Can you give a direct response to the question without going off into something else?

A. Without having made an analysis myself of the complete operating cost of handling the ore service and having seen no such analysis I would assume that the cost per ton mile in ore service is less than the cost per ton mile in handling all other commodities on all other parts of the system.

Exam. Dishman: Well, now that should cover it, shouldn't it? I say, that should cover it?

Mr. Maguire: That satisfies me.

[fol. 3019] By Mr. Maguire:

Q. Now I believe you stated that some of the data contained here in Exhibit No. 52 was obtained from the annual reports of the three companies to the Interstate Commerce Commission and some from their reports to their stockholders?

A. I believe that to be so. The exhibit was prepared under my direction but I am not personally familiar with the sources of all the material that it contains.

Q. Yes. The only question I have on that is this, Mr. Irwin, that where you take an item from, let us say the report to the Interstate Commerce Commission, that corresponding item is incorporated into the exhibit as to the other two lines if you do that as to one line, if you go to the report of the stockholders on one line you also go to the report of the stockholders on the other two lines on any particular line, in other words, you don't have a mixture of sources, do you, on the same item?

A. I wouldn't think so. I cannot answer that with certainty, but the information reported to the Interstate Commerce Commission in form A is identical, we will say—

Q. (Interrupting) Sure.

A. (Continuing) —for all three companies. I haven't examined this to the extent of comparing it with form A to know what portion, if any, of the information contained herein was taken from sources other than Form A.

Q. Let's turn to page 2 of the exhibit, if you will, please. Your operating ratios, all of these ratios which are shown, [fol. 3020] depend to a great deal upon the density of traffic on these particular railroads, does it not, that is, if they have more traffic you have more revenues and you will have a lower operating revenue, operating ratio, that is the general trend so far as operating ratio is concerned, is it not?

A. I couldn't agree with that wholly.

Q. Isn't it true that assuming your operating expenses to be running along pretty much at a level that an increased density of traffic will lower your operating ratio, maybe not in exact proportion but will depress the ratio?

A. And in some cases it doesn't do that at all.

Q. And that is where your operating expenses increase unduly with your density of traffic?

A. Yes.

Q. Is it not the usual rule of thumb?

A. I would say that it is in the case of the three roads represented on this exhibit.

Q. Well, yes, that is what we are talking about. That

the differences in costs per unit and so forth which depend upon, depend largely upon your density of traffic, if you have lower density of traffic you are going to have higher unit costs, aren't you?

A. Yes.

Q. And the fact that there are higher unit costs if you do show a lower density of traffic considering the number of miles operated the higher cost basis does not neces- [fol. 3021] sarily apply in efficiency of operations or anything of that sort, does it?

A. Not necessarily. There are many cases where the requirement to operate what may be termed fixed service increases the cost without any comparable increase in volume of traffic.

Q. And would you say that as to Exhibit 52 that—oh, I think we have followed that enough.

Exam. Dishman: We will take a short recess.

(Short recess.)

Exam. Dishman: We will resume, gentlemen.

By Mr. Maguire:

Q. Mr. Irwin, let's get on a somewhat less emotional topic and talk about the reduction in trains by reason of the assumed loss of business. How many cars per year did you assume for the sake of your study would be lost to the Milwaukee?

A. Our figures were based on one-third of 19,641 or 6,547 cars.

Mr. Torinus: And that is the east bound figure on Exhibit 46, page 2, is that correct?

Mr. Maguire: Yes, I see it, thank you.

By Mr. Maguire:

Q. How many cars, I didn't hear it?

A. 6,547. You may want to check my arithmetic.

Q. Well, for the time I will accept that. That would be about how many cars per day? Would you accept my arithmetic if I'd say probably about 16 cars per day?

A. Yes, I'd go along with that.

Q. And when you get on to the Willmar division of the Great Northern you anticipated that the loss of those [fol. 3022] 6,500, those 16 cars per day, would result in an average reduction in the two months in question of about 17 trains?

A. Of that order.

Q. And that then if you multiply your 16 by 2 that would be a little bit better than one train every two days that would be taken off?

A. Yes.

Q. That would be 32 cars?

A. No.

Q. Isn't that the way you figure it?

A. No.

Q. How would you do that?

A. My previous testimony will cover that phase of it because it was not a matter of running an additional train with 15 or 17 cars, but with the lack of that number of cars which necessarily moved on a symbol train of time freight the number of trains would be reduced, for the reason that other traffic which would be used as a fill to build up a train, those 17 cars plus the fill, the cars designated as fill cars would be held for some following train, consequently reducing the number of trains actually run.

Q. Well, your fill cars, so-called, which would be placed into your symbol train—

A. (Interrupting) Yes.

Q. If you were merely replacing like with like would [fol. 3023] amount to about an average of 16 cars per day, wouldn't they?

Mr. Torinus: Per day?

Mr. Maguire: Per day.

A. No.

Mr. Torinus: Oh, 16 cars per day.

Mr. Maguire: Yes.

By Mr. Maguire:

Q. You are losing 16 cars per day so you will replace them with so-called fill cars of your branch line trains?

A. But we don't run additional trains just because of those 15 or 17 fill cars. There is, if you please, a reservoir of business in the terminal ready to move, and it can be handled on any following train that may be operated within the next few hours or the next day, as the case may be, and it will be held for that purpose in the absence of these 15 or 17 cars of freight requiring symbol handling. If we have those 15 or 17 cars requiring symbol handling, then some of this business being held for fills will be placed in the train run for the purpose of handling these 15 or 17 symbol loads, in order to make a train out of it.

Q. Then, as I get it, I am trying to simply get it so that a lawyer can understand it, and what happens, then in your calculations? If you take out an average of 16 cars per day from these extra trains, which I am going to call them for lack of a better name, and put them over into the symbol train to replace the 16 that you are not getting off of the S. P. and S. now, that then, that will enable you to economize in the number of trains that will [fol. 3024] result in an average of about one less train every two days, is that an incorrect simplification of it?

A. No, I think that is essentially correct. Let's bear in mind that we may operate six, eight or ten tonnage trains east bound on the Minot and Willmar divisions each 24 hours. The probability is that not more than four and possibly only three of those will be symbol trains, all the others will be what you characterize as extras, and we can and do handle heavy tonnage on those trains and this business that is being held at the several terminals which would be used as a fill-up to the capacity of the extra trains, the extras being the difference between the total number of trains run and the symbol trains, the fill will be put in those trains, and obviously it frequently happens that the fill-in itself amounts to enough business to run an additional extra. Then getting back to our 15 or 16 symbol loads that came off of the S. P. and S., because of the character of that traffic we will run a train and make a full train by adding to it these fill cars when otherwise the same fill cars would be held for some following extra train or possibly put in one of the symbol trains

that would be running, anyhow, thus reducing the total number of trains to be operated because of the lack of these 15, 17 cars from the S. P. and S.

Q. Do you do that at the present time with your seasonal fluctuations of business?

A. Yes, we do. My testimony throughout with respect [fol. 3025] to this phase of the operation has been based on a train sheet examination and a re-dispatching of the business that was actually moving during these months and the way it would have been re-dispatched without this S. P. and S. business.

Q. Now, I suppose in your months of light movement, February being typical, do you run less, a smaller total number of lines east bound over the Minot and Willmar divisions?

A. Yes, we would. I would point—

Q. (Interrupting) I mean do you ordinarily at the present time?

A. Yes. I would point out that even in February, for example, we have at least two classes of business coming off the branches in North Dakota, and those coming into the main line at Willmar that result in a rather substantial volume of business, grain and potatoes, moving south and east, even in February, which is otherwise a light month, but on those two divisions your February slump, considering it as a system-wide slump, is not affected in those two divisions as strong as it is elsewhere in your system. I think that is correct.

Q. Would you look at Exhibit No. 54, please?

A. Yes, sir.

Q. I think this clearance diagram shows, does it not, Mr. Irwin, that there is no substantial difference between the Milwaukee and the Great Northern so far as there is concerned their ability to handle the type of equipment which makes up the overwhelming preponderance of the S. P. and S. shipments?

[fol. 3026] A. That is so.

Q. And where one line might have greater clearances than another, why, of course, so far as clearances are concerned, a miss is as good as a mile, isn't it?

A. Instead of answering yes or no I would like to say that I think the practice of all three lines here involved is the same in that if they have an oversized load which does not clear the published clearances they have alternate routes so that they can handle that load by a detour, if you please, over their own lines and get around the limited clearances.

Q. So, so far as clearances are concerned I think it would be entirely fair that we are all in about the same boat?

A. I think that is so.

Q. Just so we can have something for any possible computations that either side might want to make in their briefs, is there any rule of thumb standard for the translation of gross tons, for example, you were talking about a train of 5,000 tons, another train of 7,500 tons, could that be translated into cars, just a rough estimate?

A. The loading varies a good bit with the different commodities, so a rule of thumb estimate might be rather inaccurate unless the train that we were talking about was comprised primarily of one commodity.

Q. In your branch of the railroad activities you do not have any rough rule of thumb where you could say that [fol. 3027] 7,500 tons equals approximately so many carloads or more?

A. I haven't used it. If I were making some computations I would want to know about what proportion of the total train was comprised of grain or lumber or refrigerated products or something of the kind.

Q. And I also assume loads of empties, too?

A. Exactly.

Q. If there isn't any I won't pursue it, I just wondered.

Mr. Maguire: I think that is all, Mr. Irwin, thank you.

OFFERS IN EVIDENCE

Mr. Torinus: At this time I will offer in evidence Exhibits 49 to 56, inclusive.

Mr. Maguire: No objection.

Exam. Dishman: Exhibits 49 to 56, inclusive, are received in evidence.

(Intervenor's Exhibit Nos. 49 to 56, inclusive, Witness Irwin, were received in evidence.)

[fol. 3028] Mr. Golden: Mr. Ulyatt.

E. S. Ulyatt was sworn and testified as follows:

Direct examination.

By Mr. Golden:

Q. Would you state your name, Mr. Ulyatt, and spell it?

A. E. S. Ulyatt, U-l-y-a-t-t.

Q. And what is your residence and business?

A. St. Paul, Minnesota, I am general superintendent of transportation for the Northern Pacific Railway Company.

Q. Would you please give us a brief summary of your railroad experience, and state, if you will, what your present position involves?

A. I entered the employ of the Northern Pacific in August 1919. I had various jobs, including train master, assistant superintendent, chief clerk. I entered the transportation department in June 1946 as assistant general superintendent of transportation. On March 16, 1954, I was made general superintendent of transportation.

I have general supervision over the transportation department, including car distribution, car supply, general movement of freight and passenger trains, schedules, and car accounting.

Q. Are you familiar, Mr. Ulyatt, with the system in general use throughout the United States for the distribution of freight cars between railroads?

[fol. 3029] A. Yes, I am.

Q. Would you state what that system is?

A. The distribution of freight cars throughout the United States, it is handled by the car service division of the Association of American Railroads. The car service division keeps informed by periodic reports from all railroads of car ownerships and availability of empty cars for loading.

Q. How do they keep up with this number of empty cars for loading or the availability of empty cars for loading?

A. Well, if there are sections of the country that show surpluses or shortages, these are reported by the various railroads, and these shortage reports are consolidated by the car service division on what is known as Form CS-44. From this data the car service division is able to determine currently sections of the United States and particular railroads which are experiencing any car shortages, and also sections of the United States and individual railroads which have a surplus of empty cars. If the Northern Pacific is short of cars for loading or if we anticipate we may be short of box cars for loading we make a direct request to the car service division for a directive from the division to some railroad or railroads to make available empty cars to us.

For example, if we anticipate a need for cars and it appears that the New York Central Railroad has a surplus of empties, the New York Central may be directed by the [fol. 3030] division to route empties, empty cars, to our line. That directive will specify also the bridge line between Chicago and the Twin Cities, which is to handle empties delivered by the New York Central at Chicago for delivery to us at the Twin Cities. Sometimes the Milwaukee is directed so to handle empty cars for our use. Similarly, if we have a surplus of cars, we may be directed to deliver cars to another line which anticipates a shortage. Thus there have been cases on the west end of the railroad where we have been directed to deliver empty box cars to the Southern Pacific at Portland. As far as I know there is no legal obligation on the part of any carrier to comply with any such directives of the car service division, but all railroads depend in periods of shortage on the smooth functioning of that system. And generally there is compliance by all railroads with directives from the Association of American Railroads with protection of the individual railroads themselves.

Q. How does the Association of American Railroads determine what line shall be used as a bridge line in the example which you gave of the New York Central cars between Chicago and the Twin Cities?

A. Each railroad makes monthly reports of box cars to the car service division, showing the number of box cars

loaded and empty, delivered to each of its connections, and also the number of loads and empties received from each of its connections. The balance between the Northern Pacific [fol. 3031] and the Milwaukee, as an example, is usually favorable to the Milwaukee, that is to say, the Northern Pacific as a general matter delivers more cars loaded and empty to the Milwaukee in the ordinary course of business than it receives from the Milwaukee loaded and empty. In the year 1953 the excess of cars so delivered by the Northern Pacific to the Milwaukee loaded and empty was 766 cars. In the year 1954 the figure was 782 cars. Based on these figures the car service division selects the railway which shall be used as the bridge line.

Again, as an example, because of the fact that we have delivered more cars to the Milwaukee in a certain period than we receive from the Milwaukee, the Milwaukee may be selected as the bridge line in order that the deliveries and receipts as between the two railroads will be more nearly in balance.

Q. How is this distribution system applied as it affects the S. P. and S. Railway System?

A. The car service division considers the S. P. and S. to be part of the system of the Great Northern and Northern Pacific.

Mr. Maguire: That is objected to.

Mr. Rockwood: We will have—

Mr. Maguire (interrupting): Just a minute, let me finish my objection.

Mr. Rockwood: Excuse me.

Mr. Maguire: Because that is a statement. It is a hearsay statement and is also amounting to, so far at least, to a [fol. 3032] speculation as to the opinion of another organization.

Exam. Dishman: You are objecting to the question?

Mr. Maguire: I object and I move that that language be stricken.

Mr. Golden: May I ask one further question, then, Mr. Examiner?

Exam. Dishman: All right.

By Mr. Golden:

Q. How do you know what that policy is, Mr. Ulyatt?

A. I have in front of me a letter from Mr. R. E. Clark, who is manager, closed car section, car service—

Mr. Maguire (interrupting): Pardon me, Mr. Ulyatt, I hate to interrupt you.

Before the letter is read I would like to examine it.

Mr. Golden: Certainly. As a matter of fact, we don't intend to read it except to tell you what the subject matter is.

By Mr. Golden:

Q. Would you continue, Mr. Ulyatt, and tell what the correspondence is that you have in front of you?

A. I have a letter—

Mr. Maguire (interrupting): If you want, I can cut you short on the time on this. I will stipulate as to what may be put in here on that.

Mr. Golden: We do not intend to take very much time with that, Mr. Maguire.

[fol. 3033] Mr. Maguire: I would prefer to stipulate.

Mr. Golden: If you don't mind we would like to put our case in in our own fashion.

Exam. Dishman: Let's have the offer of stipulation.

Mr. Rockwood: This is not proper during direct examination. Let him wait until we direct our examination and find out what we are about.

Exam. Dishman: Since we have started on this let him finish the offer of stipulation.

Mr. Maguire: I am willing to stipulate that the Association of American Railroads, as regarding the box car supply on the Great Northern and Northern Pacific state that they have been adding all along 50 per cent of the ownership and 50 per cent of the total number of box cars located on the S. P. and S. for each reporting period to the ownership and number of cars on the Great Northern and Northern Pacific. The reason is that the S. P. and S. is owned jointly by the Great Northern and Northern Pacific.

That is the reason stated in the letter and I am willing to stipulate that that is the basis.

Exam. Dishman: Is that agreeable, Mr. Golden?

Mr. Golden: As far as it goes.

And I would like to ask further:

By Mr. Golden:

Q. Whether that system has been acquiesced in by the Great Northern and the Northern Pacific.

[fol. 3034] A. Yes, it has.

Q. Do you know how long that practice has been in effect, Mr. Ulyatt?

A. Well, it was in effect before the date of this letter, which was January 23, 1950, for some years. To my personal knowledge, to 1946 and before that.

Q. Is that system one which the Great Northern and the Northern Pacific, then, have accepted as their responsibility in connection with the S. P. and S.?

A. Yes, they have.

Q. And have they acquiesced in requests made to them by the car service division from time to time for directions for the delivery of cars to the two Northern lines and have they continued, of course, with the number of cars that they have requested from the car service division of the A.A.R. cars for the S. P. and S.?

A. Well, perhaps I had better make a little explanation of how this matter is handled.

Q. If you would, please.

A. The S. P. and S. Railroad, when they figure they need a supply of box cars, will survey the balances as between the Great Northern and the Northern Pacific, to see which railroad is more responsible for furnishing cars, and then they will place orders with one or the other of the railroads or perhaps both for a certain number of box cars to be [fol. 3035] delivered to the S. P. and S. per day for their requirements.

Mr. Maguire: I dislike very much to interrupt but I would like to ask something for clarification.

You are talking about the processes followed by the S. P. and S. at the present time or is it the A. A. R.?

The Witness: The process that is followed by the S. P. and S.

Mr. Maguire: I see, thank you.

A. When the Northern Pacific or the Great Northern receive these requests for box cars, they will take the number required into consideration in their request to the A. A. R. for an additional supply of cars to be bridged to them. When cars are received in response to such requests, they have then delivered to the S. P. and S. the portions required by the S. P. and S.

By Mr. Golden:

Q. In the supply of cars by the Northern Pacific to the S. P. and S. what consideration is given by the Northern Pacific to its own departments for loading?

A. We treat the needs of the S. P. and S. the same way as we treat the needs for cars for loading on our own tracks. We have had in years past periods of car shortages in the Pacific Northwest. Usually if car shortages occur on any road serving the Pacific Northwest there are simultaneously car shortages in varying degrees on all railroads serving the territory, including the Northern Pacific, Great Northern, [fol. 3036] Milwaukee, Union Pacific, S. P. and S., and Southern Pacific. In such a period of car shortage on the Northern Pacific in the state of Washington, for example, there may simultaneously be a car shortage on the S. P. and S., and we follow the policy of distributing available cars between the requirements of the Northern Pacific itself in the state of Washington and the 50 per cent of the requirements of the S. P. and S. for which we are responsible on a basis of substantial equality. In such periods we deliver cars to the S. P. and S. to avoid acuteness of shortages even though at that time we may be unable to furnish all the cars required for loading on the Northern Pacific in the state of Washington.

Q. If the Northern Pacific is unable at any time to supply all the cars required on its own lines in Washington for loading, does it follow a policy of delivering cars to any railroad other than the S. P. and S. in those states, that is, in Oregon or Washington?

A. No. We assume no responsibility for car supply on any major railroad in the Pacific Northwest other than the S. P. and S. I will make an exception in that connection. We do have some smaller railroads that give the Northern Pacific business, such as the Camas Prairie. The Camas Prairie is owned jointly by the Union Pacific and Northern Pacific. We furnish all cars to the Camas Prairie for return loading via the Northern Pacific.

[fol. 3037] Q. From your experience in the car service division what would you say would be the effect on the car supply of the S. P. and S. if the Milwaukee were given the through rates and through routes in connection with the S. P. and S. via Spokane, which it now requests, on the same basis as the S. P. and S. has rates with the Great Northern and Northern Pacific?

A. During periods of car shortages it would have no effect on the supply of cars available to the S. P. and S. During such periods if the Milwaukee has a surplus of cars it might be ordered by the car service division to deliver empties to the Great Northern and the Northern Pacific, some of which would in turn be used by those two lines in supplying the need of the S. P. and S., and any change in tariff routes would not change the practices as now applied by the car service division.

Q. If under the practices of the car service division one carrier is directed to deliver empties to another carrier, is there any obligation on the carrier receiving those empties to deliver loads back to the carrier from which it received the empties?

A. No. Any empty cars received by one carrier under a car service division directive go to the general pool of cars available for loads originating on that carrier so receiving the empties. Thus if the New York Central delivers cars to the Northern Pacific, using the Northern Pacific or any [fol. 3038] other Chicago—using the Milwaukee or any other Chicago-Twin Cities line as a bridge, there is no obligation to return those cars or the equivalent number to the New York Central under load. Similarly, whether or not the Milwaukee obtains the routes which it seeks in this case, cars which it might deliver under a car service directive and which might move to the S. P. and S. would be cars

in the general S. P. and S. pool, and there would be no obligation on the S. P. and S. to return any loads to the Milwaukee and the cars so delivered would move in the general business of the S. P. and S. under any route.

Q. Is the extent of the ownership of cars by carrier any measure of the ability of that carrier to furnish cars to another for loading?

A. No. In the first place, the measure of car ownership is not a measure of the cars of its own on the line, consequently it is not a measure of cars available at any time on its line for loading. In the second place, under the car distribution system which I have described car ownership at any time is not taken into consideration directly by the car service division in issuing its directives for delivery of cars to other carriers. A carrier may have insufficient cars of its own but it still will be able to receive cars from other lines under A. A. R. directives.

Q. Does the car service division consider in any respect the matter of car ownership?

[fol. 3039] A. They constantly review the matter of the extent of ownership of cars by individual carriers, and if it concludes that a particular carrier is not making available to the general pool its fair share of the total cars in the United States, the division will determine how many cars in its opinion that carrier should build of a given type and advise the carrier that it should initiate the car building program that it will be in a position to furnish its fair share of the cars. The carriers, of course, are not required to comply with the recommendations of the car service division with respect to car building programs, but it is my general impression that the carriers by and large attempt to conform to the car building programs to the recommendations of the A. A. R.

Q. Mr. Ulyatt, were you present in Portland in June 1954, when Mr. S. W. W. Carr of Sioux Falls, South Dakota, testified with respect to the movement of hogs westbound from Sioux Falls?

A. I was.

Q. Since June of 1954 has there been any change made in the schedule of operation of westbound trains by the

Northern Pacific between Minnesota Transfer and Spokane and Pasco and on to Portland?

A. Yes, effective January 12, 1955, we made a change in schedule which saved approximately 24 hours in the over-all time between Minneapolis and Spokane and Pasco.

Q. Did that change in schedule have any effect on the time [fol. 3040] consumed in moving hogs from Sioux Falls to Portland?

A. Yes.

Q. Would you explain, give us the schedule of how they would now move.

A. Hogs which we handled westbound from Sioux Falls, South Dakota, move out of Sioux Falls approximately 6 p.m., on day naught which is the day of loading. They arrive at Oakes 9:30—

Q. (Interrupting) What road do they leave on that is the connecting road?

A. That is the Chicago North Western Railroad.

Mr. Maguire: Pardon me, I didn't get the departure time.

The Witness: 6 p.m.

A. (Continuing) —they arrive Oakes on the C. N. and W. 9:30 a.m. on day one. The cars are handled from Oakes to arrive Jamestown on the Northern Pacific at 4 p.m. on day one. Connection on the Northern Pacific leaves Jamestown 7:35 p.m. on day one and arrives Pasco 10:30 a.m. on day three.

Mr. Maguire: What was that arrival at Pasco?

The Witness: 10:20 a.m.

By Mr. Golden:

Q. That would be the third day after they left Sioux Falls?

A. Yes.

Q. After loading?

A. That is correct.

[fol. 3041] On that schedule hogs are fed and watered at Jamestown and thereafter there is only one additional feed between Jamestown and Seattle on the Northern Pacific or

Portland on the S. P. and S. That additional feed is either at Missoula, Montana, or at Spokane, Washington. On the present schedule hogs can be handled from Sioux Falls to either Seattle or Portland with only two feeds en route whereas under the schedule in effect when Mr. Carr testified three feeds were necessary when the hogs moved over that Northern Pacific route. The running time between Sioux Falls or Portland and Seattle is approximately 24 hours less than it was at the time Mr. Carr testified.

Q. Has that new schedule had any effect on the volume of hogs that move between Sioux Falls and the Pacific Coast points?

A. Yes, it has.

Q. Do you have some comparative figures?

A. I have.

Q. For what periods?

A. From January 12 to March 31. I have comparative figures for 1954 as against 1955.

Q. What moved in 1954?

A. To Seattle no cars; to Portland 32 single-deck stock cars; to Salem, Oregon, no cars.

In 1955, the period January 12 to March 31, inclusive, we had to Seattle 104 single decks, 15 double decks, or a total of 134 decks of hogs. To Portland we handled 28 single [fol. 3042] decks, 20 double decks, or a total of 68 decks of cars. To Salem, Oregon, we handled 11 single decks, 3 double decks, or a total of 17 decks.

Q. Did you find any hogs moving at all to Cornelius, Oregon?

A. No, I didn't find any record of any.

Q. You checked that?

A. Yes, I did.

Q. Did you also hear the testimony of Mr. A. J. Jaynes at the Portland hearing in June of '54?

A. I did.

Q. Do you recall that he testified that he had tri-weekly service from Northern Pacific points and S. P. and S. points via Oakes, North Dakota, and the North Western to Mitchell and Sioux City?

A. Yes.

Q. Is that a fact?

A. No. As a matter of fact, the Northern Pacific on any freight which might originate at northern points or S. P. and S. points has daily except Sunday service to Oakes, then Chicago, North Western to either Mitchell or Sioux City.

Q. You say "northern points". You mean Northern Pacific points?

A. Yes, Northern Pacific points.

Q. Is there any other service available for the movement of fresh fruits and vegetables from S. P. and S. points to [fol. 3043] Mitchell and Sioux City?

A. Yes, we have daily service into Jamestown which connects with the Midland Continental Railway Company. This railway also has a daily service except Sunday, over to a connection with the Milwaukee at Edgeley, North Dakota, for movement on to Mitchell and thence to Sioux City.

Mr. Golden: You may cross-examine.

Cross-examination.

By Mr. Maguire:

Q. Mr. Ulyatt, the policy of the Association of American Railroads which, according to your testimony, has been in existence since, I believe you said prior to 1945?

A. Yes, sir.

Q. Was that reached after the exchange of correspondence in 1940 between Mr. Pelley, president of the Association of American Railroads and Messrs. Gavin and Denney of the Great Northern and Northern Pacific, respectively? Those are exhibits in this case, Exhibit No. 41, do you know whether they had any effect upon it?

A. No, I do not.

Q. Now, then, are direct requests ever made upon the Northern Pacific by any of its connecting lines for cars, other than by the S. P. and S.?

A. There are some cases where an industry is located, just using this as an example, Spokane, on the North Pacific Railway Company, and this industry wishes to ship out via [fol. 3044] the Milwaukee, then the order is placed by the

Northern Pacific on the Milwaukee for a car of a certain type with that loading.

Q. Do railroads at any time inquire between themselves without making or requesting through the A. A. R. for any additional equipment?

A. Oh, yes.

Q. That is quite frequently done, isn't it?

A. It is done occasionally.

Q. Yes, and as a matter of fact, the A. A. R. gets into the question only when the carriers do not seem to be able to settle the question of distribution of equipment among themselves, isn't that true?

A. Well, the A. A. R. gets into the situation most of the time.

Q. But where carriers are unable to make the arrangements for distribution among themselves, isn't that true?

A. Yes, that is correct.

Q. So the normal procedure is for the carriers to make requests upon each other for the loan of equipment or the furnishing of equipment?

A. That is done at times. Of course, on the west end of the railroad there is never any such a trade made between the railroads.

Q. What does the Northern Pacific do about furnishing cars to the Washington, Idaho, and Montana Railway at Palouse, Washington?

[fol. 3045] A. We furnish cars.

Q. At their request?

A. Yes, sir.

Q. And the Columbia Cowlitz is furnished at Rocky Point, Washington?

A. Yes, sir.

Q. And to the British Columbia Electric Railway at Sumas, Washington?

A. Yes, sir.

Q. Those railroads or none of them are owned or controlled by the Northern Pacific, are they?

A. Not to my knowledge.

Mr. Maguire: Off the record.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

By Mr. Maguire:

Q. You mentioned the fact that all carriers, all rail carriers, submit or turn in to the Association of American Railroads surplus reports which would correspond or supplement, rather, the shortage reports which they are considered together by the association, are they not?

A. That is correct.

Q. It is a fact, is it not, that when a railroad turns in a surplus report it does not include in that report cars which it has agreed to furnish to another railroad, those [fol. 3046] are not included, are they?

A. I do not know of any cases of that kind, Mr. Maguire.

Q. You do not know of any case where another railroad has made a request upon the reporting railroad, and the reporting railroad has agreed to relieve the shortage of the other railroad?

A. Oh, yes. I do not know whether they include that in their reports of surplus or not. If the cars are spoken of, I suppose they would not.

Q. They just omit those cars from their surplus reports, don't they?

A. If they are tagged for somebody else.

Q. So therefore the Milwaukee, if it were to tag some cars for the S. P. and S., would not have to report those cars in their surplus report, would they, to the A. A. R.?

A. If the Milwaukee would tag some cars to the S. P. and S., I don't quite understand. Under what circumstances that would—

Q. (Interrupting) To relieve any car shortage on the S. P. and S., if they voluntarily gave them some cars or pledged them some cars, those cars would not be reported to the A. A. R. in the surplus report, would they, they would be ignored?

A. I presume so. I don't know what the Milwaukee would do.

Q. Well, you know what the procedure is before the A. A. R., don't you?

A. Yes.

Q. That would be normal procedure that they would [fol. 3047] not report them as surplus cars if they were earmarked to be turned over to the S. P. and S., would they?

A. I don't think they would.

Q. Therefore the A. A. R. is not the only source or disposing power, disposing authority, so far as redistribution of empty cars is concerned or other cars, redistribution of equipment is concerned, are they, the carriers still have some independent action on it, don't they?

A. They work together on the distribution of cars.

Q. Your answer is the carriers still have some independent action, don't they?

A. Yes.

Q. There is just one further little point, Mr. Ulyatt. You stated that it made no difference so far as the A. A. R. distribution orders or bulletins are concerned as to car ownership. Did I understand that correctly?

A. Yes. Perhaps a little further explanation of that would be in order. In other words, when a railroad becomes short of cars the A. A. R. doesn't necessarily take into consideration the ownership of that railroad in issuing directive to other railroads that would get them a supply of cars.

Q. In other words, they wouldn't say that, for example, the Northern Pacific owns so many cars and therefore they are entitled to so many cars, is that what you are getting at?

A. Yes.

[fol. 3048] Q. But, on the other hand, if there are two railroads and one of them has a higher percentage of cars owned upon its line than another, what is done there as between the two of them?

A. They take that into consideration.

Q. And what do they do about it?

A. They try to get cars, a sufficient number of cars, to the railroads having a deficient number of cars on that railroad.

Q. Pardon? I just didn't catch the last of what you said.

A. Will you read that, please?

(Answer read.)

Q. I don't understand you but I don't think it makes an awful lot of difference.

Mr. Ulyatt, let us take as an example here where one railroad, let us say, there are two railroads each of them who own 5,000 box cars, just to pick an odd number, one of them has 5,000 box cars on its line, a number equivalent to its full ownership.

A. Yes, sir.

Q. The other one only has 4,500 cars, box cars, which is equivalent to 90 per cent of its ownership. They both of them report in to the A. A. R. that they need, each need, 1,000 additional cars. Now, which one will get the preference if there is a real shortage in the distribution of cars?

A. I don't think either railroad would.

Q. You don't think they would?

[fol. 3049] A. No, sir.

Q. You don't know it to be a fact that the one with the smaller number of cars in proportion to the total ownership regardless of actual reports of need would get the preference?

A. Of course it would depend upon the severity of the shortages, I think.

Q. I won't belabor it with you if you are not sure, then.

Mr. Maguire: Thank you, that is all I have.

Exam. Dishman: Anything more, Mr. Golden?

Redirect examination.

By Mr. Golden:

Q. Did you hear the testimony of Mr. Turnburke, Mr. Ulyatt?

A. No, sir.

Q. Have you ever seen Exhibit 41 in this case?

A. No, sir.

Mr. Golden: That is all.

Exam. Dishman: The witness is excused.

(Witness excused.)

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.
We will recess until 9:30 Monday morning.

(Whereupon, at 4:40 p.m., an adjournment was taken until 9:30 a.m., Monday, April 11, 1955.)

[fol. 3052]

Transcript of Proceedings—April 11, 1955

Exam. Dishman: Gentlemen, the hearing will come to order.

Are you ready to proceed, Mr. Hillman?

Mr. Hillman: I am, yes, sir.

Exam. Dishman: All right.

Mr. Hillman: I would like to call Mr. William A. Weiss.

Mr. Examiner, I will have an exhibit to be presented by Mr. Weiss. I was wondering how you would like to have that marked.

Exam. Dishman: Has it been distributed?

Mr. Hillman: Yes.

Exam. Dishman: This exhibit will be identified as Exhibit No. 57.

(Defendant's Exhibit No. 57, Witness Weiss, was marked for identification.)

William A. Weiss was sworn and testified as follows:

Direct examination.

By Mr. Hillman:

Q. Will you please state your name, position, and address?

A. My name is William A. Weiss. I am auditor of freight accounts of the Chicago and North Western Railway Company, Chicago, Illinois, at 4809 Ravenswood Avenue.

Q. Would you describe your experience with the Chicago and North Western Railway Company, please?

A. I have been with the Chicago and North Western Railway Company since 1917. I have had a varied ex-
[fol. 3053] perience in freight accounts work, including supervision of the rate department from 1936 to 1941, chief clerk from 1941 to 1948, assistant auditor freight accounts March 1, 1952, to September 1, 1954, when I was appointed to my present position.

Q. And would you describe your present duties as auditor of freight accounts?

A. Well, I supervise the auditing of all types of freight accounting, freight revenue accounting data, which includes revision of freight rates on waybills, preparation of interline abstracts, application of divisions thereto, preparation of interline settlements to connecting carriers, rechecking of accounts, and so forth.

Q. Now I show you a four-page document, Mr. Weiss, which has been marked for identification as Exhibit No. 57, and ask whether this document was prepared by you and under your direct supervision.

A. It was.

Q. Will you please describe and explain the contents of this document?

A. The figures in this exhibit were obtained from the cards which were given to me by Mr. Lear of the Great Northern and Mr. Webb of the Northern Pacific. These were the cards which were described in their testimony in connection with Exhibits 46 and 47. The figures shown in Item 1 were determined by the simple addition of the cars and revenue shown on these cards. In the case of the Great
[fol. 3054] Northern the cards cover the period for the entire year 1953. The Northern Pacific cards, however, cover only the months of February, May, July, and November 1953. The totals of the cards for these four months were projected into the entire year by multiplying such totals by three.

Q. Is there any further description that you want to give of the actual figures shown on the exhibit?

A. Well, the exhibit is an analysis of cars and revenue of traffic originating or destined to points on S. P. and S.

or Oregon Electric or Oregon Trunk and interchanged between the Chicago, Minneapolis, Omaha, Great Northern, and Northern Pacific in 1953.

Q. Do you include the Chicago, Minneapolis, and Omaha as part of the North Western's System?

A. Yes, sir.

Item I, Page 1, shows that the total number of cars interchanged between the C. & N.W. System and the Great Northern and Northern Pacific on S. P. and S. traffic was 8,522, and that the revenue earned on these cars was $1,085,724.93.

Q. Will you explain that for Mr. Rockwood?

A. I didn't hear.

By Mr. Rockwood:

Q. Whose revenue is that, that million dollars?

A. That is the C. & N.W. System revenue.

By Mr. Hillman:

Q. Including the Omaha line and North Western?

A. Including the Omaha line and the North Western.

Q. Did you make any corrections from the mimeographed [fol. 3055] sheet on Page 1 on your exhibit?

A. Yes, there is one correction that was made there. The total of the Northern Pacific eastbound and westbound is shown as total Great Northern. That should be N.P.

Q. And that correction has, in fact, been made in ink on all the copies which have been distributed, is that correct?

A. Yes, sir, as far as I know.

Q. Will you go on to explain Item 2, then?

A. Item II on Page 2, shows the C. & N.W. System cars and revenue in Item I not affected by the C.M. St. P. & P. proposals in I.C.C. Docket 31466.

Q. Will you explain why you consider the cars shown on Page 2 are not affected?

A. Under Subheading 1 we show the number of cars of lumber and lumber products moving eastbound, delivered to points on the C. & N.W. System, common to the Milwaukee Railroad to which joint through rates and through routes are presently in effect via Spokane and the C.M. St. P. & P.

from origins on the S. P. and S., Oregon Electric, and Oregon Trunk. There were 173 such cars with system revenue of $19,243.17. In other words, this category is eliminated because the Milwaukee already has through routes.

Under Subheading 2 is shown the number of cars in Item I, all commodities, including lumber, originating at or destined to points on the C. & N.W. System not served by [fol. 3056] the C.M. St. P. & P. There were 1,080 cars for a total system revenue or C. & N.W. System revenue of $157,671.67. This category is not affected because the Milwaukee will not be able to establish through routes to these points via single line routes.

The upper half of Page 3 is a continuation of Page 2, that is, a continuation of Roman Numeral II.

Under Subheading 3 shows the total of Subheadings 1 and 2, bringing us to a grand total of 1,253 cars and C. & N.W. System revenue of $176,914.84 to be deducted from the totals shown on Item I on Page 1.

Q. So this far we have Item I representing all the cars and revenues on traffic interchanged as described, and Item II representing that amount which you consider will not be affected?

A. That is right.

Q. Then would you go on with Item III, please?

A. Item III, Page 3, shows the total number of cars in Item I after eliminating from Item I the total cars and revenue included in Item II and shows a grand total of 7,269 cars and C. & N.W. System revenue of $908,810.09. This is the total number of cars handled by the C. & N.W. System and the revenues earned by the C. & N.W. System which would be vulnerable to solicitation by the Milwaukee on the basis of a single line haul from Spokane.

Mr. Hillman: I have no further questions, Mr. Examiner, and Mr. Weiss is tendered for cross-examination.

Mr. Maguire: Is there any supporting direct?

[fol. 3057] Mr. Rockwood: I have no questions.

Cross examination.

By Mr. Maguire:

Q. Mr. Weiss, I notice that your exhibit on Page 4 shows that the source of the data is the Chicago and North Western System Interline Settlements, Forwarded, Received, and Intermediate in your accounting department. As a matter of fact, that statement isn't quite correct, is it? Isn't the source of your information the cards that were given you by Messrs. Lear and Webb?

A. Yes, they are. Of course we have exact copies of those settlements in our office.

Q. Yes, I know, but your exhibit was made up on the basis of data furnished you by Messrs. Lear and Webb rather than your own accounts, isn't that true? You worked over those cards to get these data?

A. That is correct.

Q. It would be possible, of course, to confirm the information there or to check the information from your own records?

A. We had occasion to do that in a few cases.

Q. You did that in a few cases?

A. Yes.

Q. Did you do that in all cases?

A. No, sir.

Q. Would you turn to Page 2 of your exhibit, and I wish to refer to the heading under Roman Numeral II, which is [fol. 3058] C. & N.W. System Cars and Revenues in Item 1 Not Affected by C.M. St. P. & P. Proposals. By that you mean—you say not affected—so far as the C. & N.W. is concerned, do you not?

A. The C. & N.W. System, yes.

Q. Were you present when Messrs. Lear and Webb were cross-examined upon their exhibits?

A. Yes.

Q. Those are Exhibits 46 and 47?

A. Yes, sir.

Q. And without going over the ground again, the data which you received from them and which you used is subject to what explanations were given or will hereafter be

given by them, by Messrs. Lear and Webb, on cross-examination, is that true?

A. Well, I would hardly think that would be entirely true, Mr. Maguire, because their position and ours is a little different, and those things that you asked them were many things we wouldn't be really—

Q. All right, let's get down to this, then, as to the basic data shown on these cards which you worked over, the items which were included and the items which were omitted, that same explanation would necessarily apply to the cards which were furnished to you and from which you compiled this exhibit, wouldn't it?

A. Yes, sir.

Q. Your duties do not include forecasts of traffic, do they, Mr. Weiss?

[fol. 3059] A. Well, to a certain extent. You mean in the same relation and manner that the traffic department would make them?

Q. Yes.

A. No, we make revenue forecasts only.

Q. Your revenue forecasts are based on data furnished you by the traffic department, are they not, as to volume of traffic?

A. That is one of the units that we use.

Q. What I am getting at is this: you do not intend by your testimony to offer any prediction whatever as to what, if any, of the traffic shown under heading Roman Numeral III would be obtained by the Milwaukee in competition with the C. & N.W. System, do you?

A. No, sir.

Q. While the exhibit does not so state, can you tell us what junctions, at what junctions, the Chicago and North Western System received the shipments shown in the exhibit?

A. At Minnesota Transfer was the main junction.

Q. And what other junctions?

A. At other junctions with the Great Northern. For example, we received 27 cars eastbound, and from the Northern Pacific 40 cars eastbound, from the Great Northern no cars westbound, and from the Northern—

Q. (Interrupting) You are going a little bit too fast for

me. On your eastbound other junctions, what did you get *from the Great Northern?*

[fol. 3060] A. Twenty-seven cars.

Q. And the Northern Pacific?

A. Forty cars.

Q. Then you were going to cover the westbound.

A. The westbound, we didn't receive any cars, that is, we did not deliver any cars to the Great Northern at any other junctions westbound.

Q. Yes?

A. But to the Northern Pacific we delivered 24 cars, that is, of course, during this same period that this covered (indicating).

Q. Yes, the period covered by the exhibit. So then, so far as your line is concerned, Minnesota Transfer is the main junction point to be considered?

A. Yes, sir.

Mr. Maguire: May I go off the record just a moment?

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

By Mr. Maguire:

Q. I gather, Mr. Weiss, that you did not in preparing or supervising the preparation of this exhibit, that you did not exercise individual judgment as to whether cars were competitive or subject to solicitation by the Milwaukee, but that your determination of those classifications was upon the same basis or bases as those used by Mr. Lear and Mr. Webb, is that correct?

[fol. 3061] A. Yes, sir.

Mr. Maguire: That is all. Thank you, Mr. Weiss.

Redirect examination.

By Mr. Hillman:

Q. Mr. Weiss, I have one question on redirect, just to make sure we all understand Mr. Maguire's last question.

With respect to the items shown in category marked Roman Numeral II, your source of information with respect to the points between which the Milwaukee now has through routes is indicated on the exhibit, is that correct?

A. Yes. Well, we checked the tariffs on that ourselves.

Q. And that is shown on the exhibit?

A. Yes.

Q. And with respect to your determination of the points under Roman Numeral II, small 2, or a big 2, as to those points which are completely local to the North Western, as far as concerns the Chicago, Milwaukee, could you describe briefly how those points were determined?

A. We referred to lists that we have of the points that are common to the C.M. St. P. & P. and eliminated those and then worked up the data from the balance. There are 88 such points on the C. & N.W.

Q. So those were the only sources of information that you were required to consult in your study outside of the cars which were given to you?

A. That is almost correct. To be exactly correct, where [fol. 3062] the information wasn't quite clear we went into our own records and got the exact information because our records were exactly the same as the information that was on those cards. We all get a copy of that abstract.

Mr. Hillman: I have no further questions.

Recross examination.

By Mr. Maguire:

Q. Just to clarify that, then, Mr. Weiss, you did take the Northern Pacific and Great Northern cards which were furnished you by or through Mr. Lear and Mr. Webb, and then you did make a further selection of your own, that is, you split them between shipments to common points, which were delivered to common points, or originated at common points of the North Western System and the Milwaukee?

A. Yes, sir.

Q. And those at local points?

A. Yes, sir.

Q. That further split was made by you?
A. Yes, sir.

Mr. Maguire: That is all. Thank you.

OFFER IN EVIDENCE

Mr. Hillman: I would like to offer the exhibit marked No. 57 in the record.

Mr. Maguire: I have no objection.

Exam. Dishman: Exhibit 57 is received in evidence.

(Defendant's Exhibit No. 57, Witness Weiss, was received in evidence.)

[fol. 3063] Exam. Dishman: The witness is excused.

(Witness excused.)

Mr. Hillman: I would like to call Mr. Robert O. Small. Mr. Small has a prepared statement which I will now distribute. In connection with Mr. Small's statement there is also one exhibit.

Exam. Dishman: The exhibit being distributed will be Exhibit 58.

(Defendant's Exhibit No. 58, Witness Small, was marked for identification.)

ROBERT O. SMALL was sworn and testified as follows:

Direct examination.

By Mr. Hillman:

Q. Will you proceed with the reading of your statement, Mr. Small?

A. My name is Robert O. Small, and I am vice-president-traffic of the Chicago and North Western System, with headquarters in our general offices at 400 West Madison Street, Chicago, Illinois.

I entered the employ of the Chicago and North Western Railway Company in 1910 as a stenographer at Peoria, Illinois, and I have served in various capacities in the traffic

department ever since, except for a brief period during World War I. My work up to the middle of 1929 was in solicitation and service offices at such off-line points as Indianapolis, Indiana, Buffalo, New York, New Orleans, Louisiana, and Philadelphia, Pennsylvania. During the fol-
[fol. 3064] lowing nine years, I was general freight agent, charged with supervision of solicitation and service activities of the entire railroad, and this responsibility was broadened to include rates and division of rates with other railroads, when I was appointed freight traffic manager in 1938. I have occupied various executive positions since 1938, involving administration of our System's traffic organization, which have included general freight traffic manager of System Lines, assistant vice-president-traffic, and vice-president in charge of rates and divisions. My present position is vice-president traffic. Throughout the years I have had broad experience in sales, that is, the procuring of traffic, and I have personally made frequent surveys and traffic studies for the Chicago and North Western System. I am, therefore, familiar with the competitive situation as it has existed in the past and as it continues to exist at the present time between the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter called the Milwaukee, and the Chicago and North Western System.

The Chicago and North Western System consists of the Chicago and North Western Railway with 7,876 miles of line, and the Chicago, St. Paul, Minneapolis, and Omaha Railway with 1,616 miles of line, a total mileage, as of October 31, 1954, of 9,492 miles. The System serves the eight states of Illinois, Wisconsin, Upper Peninsula of Michigan, Iowa, Nebraska, Wyoming, Minnesota, and South Dakota, and has a short branch line of 14.24 miles in North
[fol. 3065] Dakota. With the exception of the States of Wyoming and Nebraska, the Milwaukee has lines in these same states, in addition to the other states in which it has lines of railroad.

The principal concern of the Chicago and North Western System is that in the event complainant is successful in this proceeding, it will be natural every effort will be made by the sales forces of the Milwaukee to secure routing for the entire distance via their single line route to stations which

are competitive with the North Western, both on and off-line, and thus deprive us of the transportation of traffic to and from St. Paul, Minnesota Transfer, or Minneapolis, hereinafter called the Twin Cities. That such is the intention is evident from the testimony of Mr. P. H. Draver, vice-president of the Milwaukee, Chicago, Illinois, as it appears in this record. (Transcript Pages 80 to 85, inclusive.)

As to its entire traffic, the Chicago and North Western Railway has been dependent to a large extent upon the traffic it originates or terminates. Freight traffic provides the Chicago and North Western Railway with approximately 78 per cent of its revenues. The largest percentage of its freight traffic is interline in nature, constituting around 80 per cent. Included in this interline freight traffic are 14 percentage points which represent bridge or overhead traffic.

The average ton haul on the Chicago and North Western [fol. 3066] Railway in 1953 of 197 miles was only 61.2 per cent of the average of 322 miles for other Western District railroads, excluding the C. & N.W.

Just last Friday after this statement was prepared there became available to me the C. & N.W. or the Chicago, Milwaukee average length of haul, ton haul, for the year 1954, which was one hundred ninety-five miles or two miles less than the average haul in 1953.

There was, of course, a substantially comparable relationship between average revenue per loaded car of freight handled. In 1953 the average revenue per car of carload freight handled by the Chicago and North Western Railway was $107.61, as compared with $172.18 per car for the rest of the Western District, excluding the C. & N.W. There I would like to add that for the year 1954 our average revenue per car of carload freight for the Chicago and North Western Railway was $106.39, a decline of $1.22 under the year 1953. In other words, the Chicago and North Western Railway's earnings per car were only 62.5 per cent of the average for the other Western District carriers. The relative traffic density situation is also apparent from the fact that in 1953 the Chicago and North Western moved an average of 1,356,766 ton miles of revenue freight per mile

of road, whereas the average for the Western District, excluding the C. & N.W., was 2,190,522 ton miles. Thus the Chicago and North Western Railway freight density was 61.9 per cent of the average of the other Western District [fol. 3067] carriers.

The Chicago and North Western Railway has not had adequate earnings in the period following World War II. Its average rate of return on net investment was 1.47 per cent in the years 1946 through 1952, 1.53 per cent in 1953, and was only 0.11 per cent in 1954.

Q. Mr. Small, may I interpolate a question there? You are referring to net investment from operating income, are you?

A. That is correct.

The Interstate Commerce Commission described returns considerably in excess of these as "substandard and inadequate" in its decision of April 11, 1952, in Ex Parte 175, Increased Freight Rates, 1951, which is reported in 284 I.C.C. 589, 612.

Our operating revenue in 1954 shrunk $16,000,000 below the 1953 level, $14,500,000 of which was a reduction in our freight revenue. Due to the relative inflexibility of operating expenses, the Chicago and North Western Railway was only able to reduce such expense about $8,500,000 which left us with a deficit of approximately $4,500,000 after fixed charges for the year. As a result, for the first time there was no available net income to pay the interest on our second mortgage bonds. The Chicago, St. Paul, Minneapolis, and Omaha Railway suffered a deficit of about $3,000,000 for the year 1954. It is obvious that the North Western System must not only retain the revenue tonnage it is now handling, but must also secure additional tonnage [fol. 3068] if it is to continue to provide the public with efficient service.

At this time I would like to introduce a map identified as Exhibit No. 58. This map shows the Chicago and North Western System lines in black and the lines of the Milwaukee in red. The map also has various points which are encircled at which a track connection exists between the Chicago and North Western System and the Milwaukee, and which points are, therefore, competitive. With few excep-

tions, reciprocal switching arrangements are in effect at all of these points. In addition to the aforementioned points there are numerous points served by System lines which are also served by the Milwaukee, but at which points no track connections exist. To the extent that delivery may be taken on either line these points are also competitive.

The Milwaukee throughout the years has been one of the keenest competitors of the Chicago and North Western System, and this is as true today as it has been in the past. It is obvious that no definite figure can be stated as representing the loss of tonnage and revenue which would ensue from the establishment of through routes and rates as sought in this proceeding, followed by active efforts of the sales forces on the part of the Milwaukee. However, in my opinion, there would be a real threat to the traffic which our System lines handle via the Twin Cities' gateway. In my opinion there probably would be a diversion of such traffic in an undeterminable amount to the single line route [fol. 3069] of the Milwaukee. The potential diversion, if it should take place, could result in a very serious loss of traffic and revenue to the Chicago and North Western System.

Loss of traffic volume and gross revenue is more than an ordinary threat to the financial stability of the Chicago and North Western and to its ability to serve its patrons adequately. Its situation as a comparatively short haul carrier, and with a substantial amount of light density mileage, leaves less flexibility within which operations may be adjusted to meet decreased business.

It is our experience, and the experience of the railroad industry in general, that shrinking earnings always create the strongest pressure for reduction of operating expenses, including deferment of maintenance, car repairs, and other activities of this nature. Efforts along these lines result in layoffs of railroad employees. Unfavorable repercussions on capital improvement programs may be anticipated. Naturally none of these unfavorable factors contribute to the national economy.

Mr. Hillman: Mr. Small is tendered for cross-examination.

Cross examination.

By Mr. Maguire:

Q. As I get it, Mr. Small, you are scared, but you don't know how scared you ought to be, is that it?

A. I am plenty scared.

Q. Eugene, Oregon, is one of the largest sources in the Pacific Northwest, and on S. P. and S. System, for shipments of lumber, is it not?

[fol. 3070] A. Yes, it is.

Q. The Chicago and North Western maintains an office there in Eugene with several employees, does it not, for the solicitation of lumber and other shipments?

A. We do, yes, sir.

Q. And you do attain, as shown by Mr. Weiss's exhibit, a substantial amount of lumber from the Minnesota Transfer east and south, do you not?

A. Yes, sir.

Q. Do you consider that the North Western is now at a disadvantage in solicitation by reason of the fact that it is not an originating carrier so far as eastbound lumber shipments off the S. P. and S. are concerned? Let me reframe the question, if you don't quite understand it.

It is an axiom, is it not, that the originating line always has the advantage in soliciting freight? Isn't that true?

A. Yes.

Q. And the North Western, of course, is not such an originating line?

A. That is right.

Q. And neither is the Milwaukee on lumber from Oregon Electric points or any S. P. and S. points?

A. That is right.

Q. Did you hear the testimony of Mr. C. E. Finley of the [fol. 3071] Great Northern to the effect that the Great Northern is also at a disadvantage in soliciting S. P. and S., Willamette Valley, because the Great Northern is not an originating carrier?

A. I did not.

Q. But if he did so testify, that testimony would be in the same pattern as what we have agreed upon here, would it not?

A. Well, of course, the origin territory is so far removed from our property that it is a pretty long stretch of the imagination that we could ever be an originating line on the North Coast.

Q. As a matter of fact, the North Western, so far as shipments off the S. P. and S. is concerned, has done very well in competition with the Milwaukee so far as shipments east of the Minnesota Transfer, has it not?

A. We feel we have.

Q. Not probably as much as you would like to get, but as compared to the Milwaukee you are not doing badly at the present time?

A. I don't know how much you handle east of the Minnesota Transfer.

Q. I think we can bring that out. It is already in the record here.

You were talking about Mr. Draver's testimony at the Portland hearing. You referred to Pages 80 to 85 of the transcript. I assume in making that reference you had read Mr. Draver's entire testimony, had you not?

A. I had read Pages 73 to 84, inclusive. I don't know [fol. 3072] whether that was his entire testimony or not.

Q. Seventy-three to where?

A. That is the only section that I had. I assumed it was. I don't know.

Mr. Hillman: I believe that includes his direct.

Mr. Maguire: Yes.

By Mr. Maguire:

Q. You have a copy of that testimony before you, haven't you?

A. Yes, sir.

Q Do you agree with this testimony of Mr. Draver, and I am reading from Page 74 of the transcript, the question was asked "Now with regard to the solicitation of business to and from the area served by the line of the S. P. and S. System, would you tell us what our policy"—the Milwaukee policy, of course—"would be if this complaint were granted?" He answered, "Well, we naturally would expect to solicit any traffic that was available by any route in

which we might participate." In answer to this question, "So far as solicitation is concerned in the area served by the S. P. and S. System, do other carriers serving Western Trunk Line territory, which is the territory east of the Eastern Gateway described of length, do they have active solicitation forces on the West Coast and particularly, and we will include, well, I should say, S. P. and S. territory?" he answered, "They certainly have.

"Question: And from your observation of advantage in [fol. 3073] solicitation, would our solicitors in S. P. and S. territory be at any advantage over other Western Trunk Line carriers?" He answered, "I doubt it. We wouldn't be the original carrier. We would have no control over the business."

Now, that statement of Mr. Draver's as to our relative advantage so far as solicitation is concerned is in line with what you and I have just discussed, and that is the original carrier has the advantage over a connecting carrier in solicitation?

A. Yes, but I think this goes further than that, Mr. Maguire.

Q. Your theory is—oh, pardon me. I interrupted.

A. S. P. and S., Milwaukee Railroad, would constitute a two-line haul from the origin territory right through to Chicago, Milwaukee, and all of Wisconsin, Iowa, and east of those points, whereas today a three-line haul is involved via any route that might be utilized. Now, I think that would give the Milwaukee Railroad a very definite solicitation advantage over the Great Northern, the Northern Pacific, and all of the lines east of Minnesota Transfer.

Q. Would it give the Milwaukee an advantage over the Chicago, Burlington, and Quincy?

A. Yes, sir.

Q. You know that the C.B. & Q. has an agency out in Eugene, do you not?

A. Yes, sir.

Q. You know that the C.B. & Q. receives shipments at [fol. 3074] the Twin Cities by direct interchange with the Great Northern and Northern Pacific rather than going through Minnesota Transfer, do you not?

A. I do.

Q. And so far as time is concerned, they really have just as speedy service as though the Great Northern or Northern Pacific had sent the lines down into the territory, isn't that true, because trains are reclassified and rearranged when they get to the Twin Cities, eastbound lines, aren't they, of all through carriers?

A. Yes.

Q. So the Burlington does have the advantage over you in connection with the Great Northern and Northern Pacific shipments?

A. I don't think so, from a schedule standpoint.

Q. They don't over the North Western?

A. I don't think so from origin to destination.

Q. So you are not worried about the Burlington competition?

A. They have the direct interchange, I admit that, but I don't believe it expedites the traffic that is routed by the Burlington so far as the receiver of the freight is concerned.

Q. So you would not worry about the Burlington competition as much as you would the Milwaukee?

A. Oh, yes. I worry about all competition.

Q. Right at the present time the North Western gets a substantial amount of traffic at the Twin Cities from the [fol. 3075] Milwaukee for carriage to North Western territory, including common points of the Milwaukee, which originates on the Milwaukee itself, on their lines west, isn't that true?

A. That's right.

Q. So you are able successfully at the present time to compete for at least part of the traffic out of the Twin Cities?

A. Very small part.

Q. You get a substantial amount of traffic out of it, do you not?

A. We get some traffic, but I don't know what your definition of substantial is.

Q. You are able to take it away from us, however, to common points, regardless of the amount, even though there is this one line haul which is available by the Milwaukee. That is true, isn't it?

A. Well, there is generally some reason for it.

Q. Why, sure, there is some reason for it, and the thing is you get it.

A. We get some, and you get some from us, too.

Q. In other words, it all resolves itself to a question of solicitation, does it not, vigor of solicitation, personality of solicitors, and so on?

A. That is a big factor, yes, sir. But the tools the solicitor has to work with are important.

Q. Do you feel that the breaking away of some of this [fol. 3076] transcontinental traffic, that is, breaking away of some of the business of the S. P. and S. from the Great Northern and Northern Pacific, would be more harmful to you than the present combination whereby, as you know, to your distress at times, all traffic that can possibly be solicited that way moves out of the Twin Cities that comes into the Twin Cities on the two Northern lines and goes out by way of the Burlington, that is kind of a package deal at this time?

A. I wish you would repeat that statement. I am sorry.

Exam. Dishman: Read it.

(Question read.)

Mr. Maguire: When I hear that I blush.

A. I can answer your question now.

Mr. Maguire: I would rather not let a question of that kind stand.

Exam. Dishman: Do you want it stricken?

Mr. Maguire: I would like to have the question stricken.

By Mr. Maguire:

Q. You are familiar, Mr. Small, with the fact, are you not, that on traffic coming into St. Paul or Minneapolis, the Twin Cities, from the west via the Great Northern and Northern Pacific it is very often involved in a sort of package deal, that is, it goes beyond the lines of the Great Northern and Northern Pacific, over the lines of the Burlington? You are familiar with that, aren't you?

A. Well, I think I know what you are trying to say.

[fol. 3077] Q. If you think you know, why, answer it, then.

A. I don't agree with you that the Burlington gets all the business from the Great Northern or Northern Pacific, by any means.

Q. I didn't say that either.

A. You have an inference there, package, package deal with the Burlington.

Q. Yes, there is every effort made by the two Northern lines to influence routing via the Burlington as well, they all work together on that routing, don't they?

A. I know, of course, that the Great Northern and Northern Pacific own the Burlington, but it has not been my experience with the Great Northern and Northern Pacific people that they solicit it preferentially or a hundred per cent preferentially with the Burlington.

Q. About what percentage preferentially would you say they do solicit for the Burlington?

A. Well, I'd like to know myself.

Q. You know there is such preferential solicitation?

A. Well, naturally, father and son connection there, there is naturally some influence, but I don't believe it is anything like you are trying to make it appear.

Q. But to the degree that you are familiar with it, you think that is less of a menace to you than giving the Milwaukee a haul from Spokane to the Twin Cities and then throwing it open to solicitation beyond the Twin Cities would be?

[fol. 3078] A. Well, we know what we are doing now under the present situation and what we have done, and we feel that with a two-line route all the way from S. P. and S. origin points to Chicago that our competition and maintaining our position in traffic, either having origin or destination on the S. P. and S. Railway, will be jeopardized, and we don't believe that we could possibly continue to handle the portion of the traffic that we are participating in today. We think it is a definite threat.

Q. But you do not wish to hazard a guess as to how much of this business you would lose, the present business you would lose?

A. Well, I don't object too much to making a guess, but I understand that Mr. Finley did the other day in his testi-

mony estimate that the Great Northern, because of a third line in there, might lose one-third of its traffic. Now, I wasn't present when he made that statement, but I understand from our counsel that he made that statement. And if the North Western was to lose one-third, which it seems to me is a very minimum that we might estimate that could be lost—

Q. Then that is your guess? I asked you what your guess was.

Mr. Hillman: Mr. Maguire, he was right in the middle of a sentence.

Mr. Maguire: Well, let him finish.

A. (Continuing)—that would amount to close to 3,000 cars.

By Mr. Maguire:

Q. Now—

A. (Interrupting) We can't afford to lose that kind of business.

[fol. 3079] Q. I understand, and it will be understood that you are in distressed financial conditions. That can go through all your testimony.

Now, you say that you think one-third is the minimum that you would lose. What is the basis of that estimate, Mr. Finley's guess?

A. No. No, not at all. I have been thinking about what my answer would be to that very question for several days, and it has bothered me somewhat. I have tried to be honest in my own conscience in reaching some kind of a conclusion. I didn't know until last night that Mr. Finley had made that statement, and I think based on my experience and knowledge of traffic, solicitation activities, that it is a pretty reasonable figure for him to make. Now, of course, one-third of the loss to the Great Northern means a great many more dollars loss to the Great Northern than one-third loss to the North Western because of the difference in the average revenue per car those two railroads obtain from this traffic.

Q. Would you pardon me for interrupting you, Mr. Small?

Mr. Maguire: Mr. Examiner, Mr. Small, it may be that he is just leading up to an explanation of his estimation, but so far he hasn't come up to an estimate, and I want to know his estimate.

Mr. Hillman: He is giving it to you at this point.

A. I was dealing with this conscience that's been bother-
[fol. 3080] ing me for the last two or three days.

By Mr. Maguire:

Q. Let's not keep your conscience under cover. Go ahead.

A. I have been, personally been, quite familiar with the solicitation activities of the Milwaukee Railroad for a good many years. I have a pretty good knowledge of their potency, and I have a very wholesome respect for their successful solicitation activities. We serve many common points with them, and it is my judgment that whether or not it expedites a carload of freight or whether it doesn't that you would have the solicitation advantage over any other connection the S. P. and S. has today, if you are given joint through routes and rates via Spokane. If it wasn't for that fear and that belief, which we think is absolutely certain, we wouldn't be here.

Q. In other words—pardon me. Did I interrupt you?

A. I would say that our loss very reasonably could be estimated at 50 per cent instead of 30 per cent or ⅓.

Q. And how many cars would that be, judging from Mr. Weiss's exhibit?

A. Judging from this it would be about 4,000 carloads, I think. No, it would be 50 per cent of 7,269 cars, 3,600 cars.

Now, I would like to say something about that, if I may.

Q. Are you still talking about the basis for your estimate?

A. Yes.

Q. All right.

[fol. 3081] A. I am not in a position to disagree with these figures because they were furnished our auditor, Mr. Weiss, by the Great Northern and Northern Pacific, but I made a study of this thing, not from any waybills, but from our agency records in the North Pacific Coast on the traffic volume that we handle that originates on the S. P. and S.

or terminates on the S. P. and S. in which we participate, and the total volume came to 12,000 carloads. Now the total volume in this case which Mr. Weiss has been working on is 8,522 cars or only 75 per cent of what our own traffic agency records show. Now, I would say that this total of 8,522 cars is, I can't say it is not correct, but it certainly doesn't agree with the traffic department figures.

Q. I gather, then, Mr. Small, that you think the Milwaukee would have something to talk about, if the prayer of the client here were granted, then, they'd have a real selling point?

A. Yes, indeed they would; and with no advantage that I can see to the shipper.

Q. But the shipper would still, the shipping public would still, be inclined to patronize that new route in large numbers, is that so?

A. I am afraid so. And that loss could easily go to six thousand cars for the North Western instead of two.

Q. I am not going to let you talk about it any more. You will be in the red on the cars.

Well, you have given me what you think is your full [fol. 3082] explanation of the basis of your estimate of a loss of one-third of the business the North Western now enjoys to the Milwaukee if the prayer were granted, that completes your explanation of it?

A. I said a minimum of one-third.

Q. I think you finally got up to a half, didn't you?

A. Yes.

Q. Do you want to go any further?

A. No, I will stop there. That's my best judgment.

Q. Can you tell me from your general information, Mr. Small, how your company's participation in business originating on the S. P. and S. System in 1953 would compare with 1951? Is it greater or less?

A. Gee, I don't have those figures, Mr. Maguire. I was going to say I might give you the comparison of '52, but I couldn't do that. I don't have the figures here.

Q. I don't ask for the exact figures, but is there any material difference between the two years?

A. '51 and '53?

Q. Yes.

A. I don't know. I don't know. I don't like to blindly guess.

Q. You threw in the comment, Mr. Small, a few minutes ago that the proposed service of the Milwaukee would create or would be popular with the public without the public getting any benefit from it. Then the single line haul from Spokane to points competitive with the North Western really is not in itself of any particular advantage at all, [fol. 3083] is it?

A. It is to the Milwaukee Railroad.

Q. I am talking about from the shipping public's point of view.

A. Well—

Q. The shipping public doesn't get any benefit from it, does it?

A. In fact, no; but psychologically, yes.

Q. Do you think that the traffic managers of industrial concerns on the Pacific Coast are misled from the actualities of transportation conditions by mere slogans, such as "single line hauls" and so forth?

A. You bet. You bet they are. I can give you one good example between Chicago and Los Angeles.

Q. I wish we could rely on that statement.

Mr. Maguire: Thank you, Mr. Small.

Mr. Cockrum: Mr. Examiner, I wonder if I might ask a question?

Exam. Dishman: All right.

By Mr. Cockrum:

Q. Mr. Small, does the North Western emphasize the advantages of single line haul service in instances where it can render a single line haul service as opposed to joint line service?

A. We do, yes, sir.

Mr. Cockrum: That is all, Mr. Examiner.

Exam. Dishman: Do you have anything more, Mr. Hillman?

Mr. Hillman: No, sir.

Mr. Musenbrock: I would like to ask a question.

[fol. 3084] Exam. Dishman: All right.

By Mr. Musenbrock:

Q. Mr. Small, I would judge the main junction between the North Western System and the G. N. and N.P. is the Minnesota Transfer?

A. That is the big interchange. We would like to see it all go through Aberdeen, South Dakota, or Oakes, North Dakota, but it doesn't go that way.

Q. Mr. Weiss testified that 85 cars went through other junctions out of 8,522?

A. Yes, sir.

Q. If the Milwaukee were successful here, would a joinder in a through rate by the S.P. and via the Milwaukee over the Minnesota Transfer via the North Western be of any benefit to your system for Chicago and eastern business, the Milwaukee, now?

A. Well, I think it would be a little difficult to answer that question with a flat no because any joint rate might be of some benefit for some purpose, but so far as the benefit that would accrue as compared with the existing situation, it would not be of a benefit.

Q. All right, take that as inherent in my question. Compare it with the present joint rate with the G.N. and N.P. What would there be as to a benefit in a Milwaukee joint rate, if any?

A. None.

Q. And why is that, Mr. Small?

A. Well, I thought I had spent quite a little time trying [fol. 3085] to indicate that the North Western's best interest, traffic interest, and revenue interest lies in the continuance of the presently existing rate and route situation. The injection of another route, which would be a single line route east of Spokane through east of the Twin Cities to points that are competitive with us, would, in my judgment, seriously diminish our participation in the total traffic movement.

Q. Well, on unrouted traffic, then, if the Milwaukee were successful here, they would not have to interchange at the Twin Cities on Chicago business with the North Western, is that correct?

A. That is right.

Q. But at the present time on unrouted traffic the G.N. and N.P. has to interchange with some W.T.L. carrier with the Twin Cities for Chicago and Twin Cities business?

A. That is right.

Q. How about the creation of additional routes, if the Milwaukee were successful here, not only the Minnesota Transfer freightway to the east and the southeast, but also the Aberdeen, Sioux City, Sioux Falls route, would that have any effect upon the North Western's business?

A. Yes, it would.

Q. Would it have any effect upon the North Western's business even west of the Mississippi River, for instance, in Iowa?

A. It would, all through Iowa.

[fol. 3086] Q. And why do you say that, Mr. Small?

A. Because there are very few points of any consequence in the State of Iowa that the North Western reaches that the Milwaukee doesn't also reach, and it is single line service right through from Spokane.

Q. I would judge that the North Western has certain junction points with the Milwaukee in the State of Iowa, do they not?

A. Yes.

Q. To the extent that the Milwaukee would have routes from Spokane into Iowa, is there a possibility of short hauling the North Western to Iowa destinations local to the North Western as distinct to the Minnesota Transfer Gateway at the present time?

A. Well, I should think there would be. Of course, as I understand the tariff situation here as proposed by the Milwaukee Railroad, there would be no route open to us, except the St. Paul route.

Mr. Maguire: The complaint says all eastern gateways.

A. All eastern gateways.

Mr. Maguire: Missouri River. You would have open routing from Aberdeen.

The Witness: I see.

By Mr. Musenbrock:

Q. So what would be your answer, then, to the question as to short haul, local to North Western, to points in Iowa, would there be a possibility or not?

A. I am not too well informed of what those—

[fol. 3087] Mr. Maguire: May I interrupt?

A. (Continuing) —those Gateway points. As I recall, the eastbound transcontinental lumber tariffs do not carry any specific routing east of the Twin Cities, Aberdeen, and so forth, so I would believe, if my assumption is correct, that the Milwaukee Railroad could bring a car down into some interior Iowa junction and deliver it to us for a point on our railroad, if that be true. That would require an examination of actual records.

Mr. Hillman: To clarify the record, Mr. Maguire stated there would be open routing from Aberdeen Gateway, but if my understanding from the last hearing is correct, that would not be unlimited routing to all points east; that would be only to limited destinations, Iowa or west, is that correct? I mean that flat statement was just made on the record, Mr. Maguire, and I thought it ought to be clarified.

Mr. Maguire: Are you talking to me?

Mr. Hillman: I was, yes.

Mr. Maguire: Would you repeat that?

Mr. Hillman: I said you made the statement just a short time ago that there would be open routing through Aberdeen, but I wanted to clarify that point because it is my understand (sic) from the last hearing that the open routing to Aberdeen is only to limited destinations in Iowa and points west of Iowa.

Mr. Maguire: I've got to confer here a minute.

In answer to your inquiry, Mr. Hillman, that offers such [fol. 3088] complications that I would not feel qualified as counsel to go into the details of routing. That is a traffic witness's.

Mr. Hillman: Then you will withdraw the statement you made as to open routes from Aberdeen?

Mr. Maguire: No, I wouldn't want to withdraw that statement necessarily. I said we offer the same open routing from Eastern Gateways, as defined in the complaint, as now apply via any line. That is what the complaint says.

Mr. Hillman: Well, just so we understand it doesn't necessarily follow from your statement that there is complete open routing from Aberdeen as there is at the present time—

Mr. Maguire: You don't understand that from my statement either. I am not a traffic witness, and I am not going to be cross-examined on it.

Mr. Hillman: I realize that you are not a traffic witness, but you made a traffic statement.

Mr. Maguire: I didn't answer, I just quoted from the complaint.

Exam. Dishman: You just quoted from the complaint?

Mr. Maguire: That is it. As to the ramifications and the technical details as to that, I certainly do not intend to be cross-examined as I am not a traffic witness.

Mr. Hillman: We have made our statements.

Exam. Dishman: As you understood it, Mr. Hillman, he made a statement as to what the complaint said about it.

[fol. 3089] And that is as far as you intended to go?

Mr. Maguire: Why, yes, that is as far as I intended to go.

Mr. Hillman: My recollection was that the statement was made that there would be open routing from Aberdeen, and I wanted to make it clear that that certainly didn't apply in the same sense that there is now open routing through the Minnesota Transfer. I think as long as there is that understanding we needn't discuss the subject any further.

Mr. Maguire: The statement I made in response to an inquiry a little while ago as to the routing through Aberdeen was that we will maintain the same open routing from the Eastern Gateways, as defined in the complaint, as now exists via any line, and that is all the further—

Mr. Hillman: That was the statement you made at Portland, Mr. Maguire?

Mr. Maguire: Yes. And Aberdeen is an Eastern Gateway, and my statement goes just that far, and I am not going to argue about the ramifications on it. I won't argue about the thing.

Mr. Hillman: As long as you make it clear that your statement doesn't go any further. But your statement this morning did have a further amplification.

Mr. Maguire: If it did, I am very, very sorry.

Exam. Dishman: All right, let's proceed.

Mr. Musenbrock: I have finished with Mr. Small.

Mr. Maguire: I have a couple of questions in response [fol. 3090] to Mr. Musenbrock's.

Exam. Dishman: All right.

By Mr. Maguire:

Q. Mr. Musenbrock was talking to you about the advantage of the Milwaukee so far as unrouted traffic is concerned, that is, they would hold it to their own line east of the transfer. How about unrouted traffic that comes in either the Northern Pacific or Great Northern to the transfer or to the Laurel Gateway, for that matter, which can be routed to destination by Burlington? What is the fate of that traffic?

A. I don't know.

Q. Don't you know as a competitive proposition that the Burlington gets unrouted traffic from the Great Northern and Northern Pacific, if there is any?

A. No, I didn't know that was the case. I didn't. I get letters quite frequently from both railroads giving me statements of unrouted traffic that was routed over our railroad, and I assume we are getting what they consider is a fair share of the unrouted business.

Q. It also is to local points on your railroad or to points not served by the Burlington, too, isn't it?

A. No.

Q. Do you get Burlington competitive traffic?

A. Well, I think so.

Q. You know whether you do or not?

A. Yes, I know we do.

[fol. 3091] Q. Now, so far as your lumber traffic from the northwest is concerned, which is the largest single eastbound commodity here, do you know how much that moves unrouted or whether the routing is not definitely provided in the billing by the shipper?

A. It's been my understanding very little of it.

Q. Very little of it is unrouted?

A. Yes.

Mr. Maguire: That is all. Thank you.
Mr. Hillman: I have no further questions.

OFFER IN EVIDENCE

I would like to offer Exhibit 58 into evidence.
Mr. Maguire: I have no objection.
Exam. Dishman: Exhibit No. 58 is received in evidence.

(Defendant's Exhibit No. 58, Witness Small, was received in evidence.)

Exam. Dishman: The witness is excused.

(Witness excused.)

Mr. Rockwood: Since it is very close to the recess time of the morning session—
Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.
We will take a short recess.

(Short recess.)

Exam. Dishman: The hearing will come to order, gentlemen.
Mr. Rockwood: I will call Mr. Keck.
I have, Mr. Examiner, two exhibits which Mr. Keck will [fol. 3092] discuss. The first is for the year 1953, and the title is "Cars Received Empty for Loading".
Exam. Dishman: That will be Exhibit No. 59. That is an exhibit of 13 pages.

(Defendant's Exhibit No. 59, Witness Keck, was marked for identification.)

Mr. Rockwood: And the second is an exhibit for the year '53, and the first columns are headed "Statement of Cars (Empty) on Hand for Distribution".
Exam. Dishman: This exhibit is also 13 pages, and that will be Exhibit No. 60.

(Defendant's Exhibit No. 60, Witness Keck, was marked for identification.)

H. H. KECK was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Will you please state your full name to the reporter?
A. H. H. Keck, K-e-c-k.
Q. Where do you live, Mr. Keck?
A. Portland, Oregon.
Q. And what is your present occupation?
A. Retired.
Q. Were you formerly in the service of the S. P. and S. Railway Company?
[fol. 3093] A. Yes, sir.
Q. When did you retire?
A. June 1, 1954.
Q. Prior to your retirement on June 1, 1954, what was the position that you held with the S. P. and S.?
A. Supervisor of car service.
Q. How long had you been in the service of the S. P. and S. prior to your retirement?
A. Forty-six years, except for about a half year in World War I, a little better than four years in World War II, and, well, for two years I was superintendent of the S. P. and S. Bus Line, but that was still S. P. and S. service.
Q. Now, as supervisor of car service, what, in general, were your responsibilities?
A. Car supply, that is, the securing of cars and maintenance of an adequate supply, its distribution, and general movement thereafter, even while under load.
Q. From what sources does the S. P. and S. System procure empty cars for loading?
A. There are three sources: the first is the cars made empty on line; the second, cars received from the parent lines, the G.N. and N.P.; and, third, miscellaneous receipts from other lines which are of not much importance.
Q. You named as the second source the cars received from the parent lines. I take it you mean the Great North-
[fol. 3094] ern and the Northern Pacific?

A. Yes, sir.

Q. Describe for us, will you, please, your dealings with the parent lines and the general mechanics of the system that is in effect for the obtaining of empties from the parent lines.

A. Our really only source of supply is from the G.N. and the N.P., other than the cars made empty on the line, and there is no other source that we have any dependence on.

Q. All right.

A. And the G.N. and the N.P., when we place orders with them, which we do in a systematic way, when numbers are ordered and very well identified—I am sorry. I don't have one with me as a sample. But those orders are always taken care of, and it's really our only dependable source of supply from any other line.

Q. From what junctions do you receive empties from the parent lines?

A. Well, from the Great Northern at Hillyard, which is at Spokane—that's Hillyard, Washington—Vancouver, Washington, the Portland, Oregon, area, and Bend, Oregon.

Q. Bend is the southernmost point of the Oregon Trunk where it joins the Great Northern line which extends north of Klamath Falls?

A. Yes, sir.

Q. Where do you receive cars from the Northern Pacific?

A. At Yardley, which is at Spokane, Washington, from Pasco, Vancouver, Washington, and the Portland area.

[fol. 3095] Q. Are your orders from the parent lines for empties for loading placed in precisely equal amounts?

A. Pretty much so.

Q. Do you take into account at all the cars received from each of them unloaded and made empty on your line?

A. Yes, sir; and that's why there is some variation.

Q. Considering loads and empties received from the two parent lines, is there any effort to keep them in balance or not?

A. Yes, sir, our effort is always to keep them as near in balance as possible.

Q. Do you have before you a copy of the exhibit which has been marked 59, which is headed "Cars Received Empty for Loading", showing data for the year 1953?

A. Yes, sir.

Q. And do you have before you also an exhibit marked 60, which in the first column shows "Statement of Cars (Empty) on Hand for Distribution" for the year '53?

A. Yes, sir.

Q. During the full calendar year of '53 were you in charge as supervisor of car service for the S. P. and S.?

A. Yes, sir.

Q. Take first this Exhibit 59 and proceed to describe generally how this exhibit is built up and what you show in it.

A. The report shows in three columns the cars received empty for loading and by months. In the first column are [fol. 3096] cars received empty from the G.N., divided between box, gondola, flat, and refrigerator. The second column shows cars received empty from the N.P. with the same division between classes of cars. The third item shows cars received empty from the S.P. and also divided as to kind of car.

Q. Each one of these pages contains data for a single month?

A. That's right.

Q. And shows receipts by calendar days in that month?

A. Yes, sir, except that—no, this is for all days of the month.

Q. In your columns headed "From S.P.", from the Southern Pacific, in running through these sheets there are no entries in that column until we come to the month of June 1953, which is Page 6 of this exhibit, and there are entries also in the first days of July from the Southern Pacific, as shown on Page 7. Do you recall the circumstance under which you received cars from the Southern Pacific in June and July of 1953?

A. Yes, sir.

Q. Will you tell us what those were?

A. The Southern Pacific is not a regular source of supply for the S. P. and S. Railway, that is, a supply of empty cars. However, the relationship between railroads involves an interchange out of the ordinary, and, however, not to such an extent as these receipts from the Southern Pacific. Now, at the time this happened the Southern Pacific was choked up with box cars on the Oregon Divi-

sion, and I was requested to take some of them. I could [fol. 3097] use them and took them. Now, the same thing happened—

Q. (Interrupting) Now, just a minute. Did you take them for what reason, as a matter of convenience to the Southern Pacific or because there was some fall-down of the supply from the Northern lines?

A. No, the supply from the Northern lines was all right, but these were desirable from the S.P. because it saved the empty haul for us from Spokane or Pasco.

Q. And it was done, you say, at the request of the Southern Pacific?

A. At the request of the Southern Pacific. They asked to be relieved.

Q. Now, proceeding through this exhibit, I find the next entries in the column Southern Pacific are on Page 11 of the exhibit for the month of November 1953. What were the circumstances in that month of November under which you received cars from the Southern Pacific?

A. The same circumstances.

Q. All right, coming over to Page 13 of your exhibit, which is headed "Recapitulation", by months, are those figures there the totals by months as shown on the preceding pages?

A. Yes, sir.

Q. In the recapitulation receipts at the bottom of the page have you added up the total of the cars received from the Great Northern in that year 1953?

[fol. 3098] A. Yes, sir.

Q. What is that total?

A. Ten thousand nine hundred forty.

Q. Have you similarly added up the four figures for the receipts of the Northern Pacific in that year?

A. Yes, sir.

Q. What is that?

A. Seven thousand two hundred nine.

Q. And again for the Southern Pacific what is the total of those two figures?

A. One one eight four.

Q. Eleven hundred eighty-four?

A. Yes, sir.

Q. Now, you have said that you attempt to keep cars in balance as between the Great Northern and Northern Pacific. In that year it appears that the Great Northern furnished empties, something over 3,000 more cars than did the Northern Pacific. Do you know anything about the number of loads received from each of the two carriers in that year?

A. I have them in the records in the office. At least I don't have them now, but the records are in my former office in Portland.

Q. Do you remember whether there was any peculiarity of the movement of Northern Pacific products coming in under loaded in that year?

A. That was a heavy grain month from the Northern Pacific.

[fol. 3099] Q. Heavier than from the Great Northern?

A. Oh, yes, very much so.

Q. Without having the precise figures, can you tell us the fact as to which of the two roads delivered more cars unloaded which were made empty on the S. P. and S. in that year?

A. I would say that the Northern Pacific did.

Q. You have before you a copy of Exhibit 60, which contains data in two columns. Will you describe generally what you show in this exhibit?

A. This exhibit has two sections. The first one is a statement of cars empty on hand for distribution. This report is compiled from daily information, except Saturdays, Sundays, and holidays. It is divided between class of car. That's about all there is.

Q. In the second set of columns headed "Car Shortage", what is indicated by the figures or by the information or lack of figures in those columns?

A. Where the blanks are there was no shortage.

Q. All right, and each one of these pages shows data for a single month?

A. That is right.

Q. Through the first 12 pages?

A. Yes, sir.

Q. There are no entries whatsoever in the column headed "Car Shortage" until we come to the month of July 1953, where there are shortages indicated in the refrigerator column?

[fol. 3100] A. Yes, sir.

Q. Were those shortages with respect to any particular type of refrigerator car?

A. Yes, sir; heavily insulated and mechanical refrigerator.

Q. Did you have any shortage at that time so far as these figures show in the ordinary refrigerators?

A. No, sir.

Q. Other than heavily insulated and mechanicals?

A. No, sir.

Q. That shows a figure of 108 at the bottom of the page, the total for the month?

A. Yes.

Q. Does that indicate that there were 108 orders that you were unable to fill?

A. No, sir.

Q. What does it indicate?

A. These figures are for each day, and if an order is not filled the next day, it is carried into the next day as a shortage or, if it goes still another day, it enters into the next figure as a shortage. These items for each day are accumulated; and that means the 108 equals the number of car days of shortage rather than of the cars.

Q. And not of the number of people or the number of cars specifically ordered?

A. That's right.

[fol. 3101] Q. You don't have, do you, or do you have the data which shows the number of shippers who for one reason or another were unable to get heavily insulated mechanical refrigerators in that period of July 1953?

A. I don't have that information here.

Q. The next entries in the car shortage columns begin on Page 9 for September 1953, again refrigerator column, and figures continue in that column into the first part of October in 1953, shown on Page 10. Does the explanation of the entries for refrigerators given with respect to July apply equally to the shortages you have shown here in September and October?

A. Yes, sir.

Q. Now, in the month of October there are box car shortages, beginning the last of the month and extending over onto Page 11. Were those a particular type of box car?

A. They were 50-foot box cars.

Q. You had other box cars on line, but the orders were for 50 foots and you couldn't fill those, is that it?

A. Yes, sir.

Q. For instance, on the 20th of the month, for which you show a shortage of 37 for 50-foot boxes, how many box cars did you have on hand for loading on the line, of all kinds?

A. Five hundred fifty-six.

Q. The shortage was in that particular type of car?

A. Sir?

[fol. 3102] Q. The shortage, then, was only in that particular type of car?

A. Yes, sir.

Q. Now come over to your Page 13 of that exhibit. You show a total car shortage for boxes of 336. Again, is that 336 orders that you were unable to fill or something else?

A. No, sir, car days.

Q. And the same applies to 165 in the refrigerator column?

A. Yes, sir.

Q. And the 501 in the total column?

A. Yes, sir. It might be well to explain, if I may—

Q. Go ahead.

A. (Continuing) —that on Page 13 in the total number of cars empty on hand for distribution, those totals in there are cumulative, like I explained a bit ago. The total for box cars shows 237,056—no. No, I am wrong on that. That applies to the other statement.

Q. Yes?

A. No, I retract that, please.

Q. You didn't have 237,056 on hand?

A. Oh, no.

Q. At any time, of course?

A. No.

Q. You had the average cars available for loading on every day of the year, excluding Saturdays, Sundays, and holidays, as shown in the last line of that exhibit, so that on [fol. 3103] the average through the year you had 1,256 cars on hand on each day, of all types?

A. That's right.

Mr. Rockwood: You may cross-examine.

Cross examination.

By Mr. Maguire:

Q. Mr. Keck those last cars that were mentioned, that is, the left-hand half of each page on Exhibit No. 60, is similarly a statement of car days, just as you use days in connection with the car shortage column, isn't that true?

A. Do you mean that the figures from one day to the other may be accumulative?

Q. Yes.

A. Yes, that is right.

Q. So that you had during the year on cars empty on hand for distribution, you had 237,056 box car days, empty box car days?

A. Box car days, yes, sir.

Q. On hand for distribution?

A. That is right, yes, sir.

Q. Then, as I understand your Exhibit No. 59, that does not show anything except the cars which you received empty by type from the Great Northern, Northern Pacific, and Southern Pacific, respectively?

A. Yes, sir.

Q. It does not include cars which were made empty upon your line which you utilized for outbound loading?

[fol. 3104] A. It does not.

Q. It does not include cars which are received in switching service from other lines and made empty at an industry on the S. P. and S. and utilized by the S. P. and S., either, does it?

A. You mean a switch car coming in overload—

Q. (Interrupting) Coming in under load.

A. No, it would not include them.

Q. Is there any relationship that can be determined by examining the two exhibits between the figures shown in Exhibit No. 59 and Exhibit No. 60?

A. Yes. Exhibit 59 shows the cars received empty for loading, and Exhibit No. 60 shows cars that are on hand for distribution.

Q. Well, beyond the fact that, for example, on January 2, 1953, you received 17 box cars from the Great Northern empty for loading, beyond the fact that that is included in the total of 2,523 box cars on hand on January 2, 1953, as shown by Exhibit 60, there isn't any other relationship, is there?

A. No, that's all. Because at that time we had considerable surplus in that part of the country, and we had more box cars than we needed.

Q. But you still got them empty from the Great Northern and Northern Pacific during that period, regardless of that?

A. Yes, sir. They were mostly special type cars, however.

Q. Now, of course, on your car shortage figures—we are going back to Exhibit 60 again for a moment—let's look at [fol. 3105] October, Page 10 of your exhibit. That figure shows that on October 20 you had 37 orders for 50-foot box cars which you were unable to fill on that day, is that right?

A. Yes, sir.

Q. And then just as illustrative, on the 21st you had 30 orders for 50-foot boxes which you were unable to fill on that particular day?

A. Yes, sir.

Q. Now, at the time that you received these box cars from the Southern Pacific you had 694 in June of 1953, 45 in July, and 417 in November. At that time did you have an excess of cars of that type on the S. P. and S.?

A. The type we received from the Southern Pacific?

Q. Yes.

A. They were not of any particular type. They were just a scattering of box cars.

Q. Oh, I see, just a scattering.

A. It was a surplus that they wanted to get rid of.

Q. And at that time did the S. P. and S. have a surplus of box cars on hand?

A. I wouldn't call it a surplus. That was in June, wasn't it?

Q. Yes, in June of 1953.

Let me put it this way: did you have enough box cars of the various types to fill your requirements during the month of June, aside from the Southern Pacific cars?

[fol. 3106] A. I would say so. There might have been a time when I might have been—no, I wouldn't. I don't recall of any case where I was tight or anything, a tight supply, and the S. P. and S. had a surplus and we could use them. We weren't overloaded. For instance, when we had this surplus in early January—that's on Exhibit 60—

Q. Yes.

A. (Continuing) —for instance, there are 2,523 box cars. That was a surplus. In June when we received these from the Southern Pacific we had an average in June, box cars on hand available for distribution, of 578. That is not surplus. I would say it was an ordinary supply.

Q. You had enough?

A. Yes, sir.

Q. And then in July you had an average of 701 box cars available for loading. Is that the normal supply?

A. Yes, sir, fairly—well, yes, it is a normal supply. Our grain movement starts in July, or the harvest.

Q. And in November of 1953 when you received 417 cars from the Southern Pacific—

Mr. Rockwood: Excuse me. What figure did you give?

Mr. Maguire: Four hundred seventeen cars from the Southern Pacific, Page 11 of your Exhibit 59.

Mr. Rockwood: Well, no—oh, excuse me. Wait a minute. I had the wrong sheet.

[fol. 3107] By Mr. Maguire:

Q. Have you found it, Mr. Keck?

Mr. Rockwood: Yes, I have checked it now. Excuse me.

A. Oh, yes. Yes.

By Mr. Maguire:

Q. In November you received those from the Southern Pacific commencing on the 5th of November, did you not, as shown on Page 11 of your No. 59—no, the 4th?

A. Yes, the 4th.

Q. And your shortage of box cars—and those were all kinds of box cars, as I gather, an assortment?

A. Yes, sir.

Q. And your shortage of 50-foot box cars was ended by November 6, wasn't it?

A. Yes, sir.

Q. By November 9—the 6th was the last day you had a shortage?

A. Yes, sir.

Q. But you continued getting box cars every day from the Southern Pacific until the 20th of November?

A. Yes, sir.

Q. Aside from the shortage of that particular type, was there a general shortage of box cars on the S. P. and S. during that month?

A. No, sir. And I might add here that chances are, this shortage was 50-foot box cars.

Q. Yes, I understand.

A. It is very unlikely that there were any 50-foot box cars [fol. 3108] in these cars received empty from the Southern Pacific.

Q. In other words, you did not receive any cars from the Southern Pacific, then, which relieved your shortage?

A. No, sir.

Q. And you did receive cars, however, of which you already had a sufficient supply on hand?

A. That's right. Either that or I would have obtained them from the G.N. or N.P.

Q. But you did have a supply on hand, a reasonable supply, regardless?

A. Yes, sir.

Q. What do you have to pay the S.P. for per diem, the regular per diem, I presume?

A. Yes, we pay them the same as we do any railroad for their own cars, but it is very unlikely that there were any S.P. initial cars in these cars delivered to us.

Q. Of course you pay the owning companies—

A. That is right.

Q. (Continuing) —a per diem on those cars just the same as you pay the owning company a per diem on cars you receive from the Great Northern or Northern Pacific?

A. That is right, yes, sir.

Mr. Maguire: I think that is all. Thank you.

Cross examination.

By Mr. Cockrum:

Q. I want to ask you a question or two with respect to [fol. 3109] Exhibit 59. These cars that you received were received for use by the S. P. and S., I suppose?

A. Yes, sir.

Q. Looking at the refrigerator cars, there during January '53 you received 277. Where were those refrigerator cars used, can you tell me that?

A. All over the line where there was any perishable loading, and that's a good many stations.

Q. Perishable traffic along the S. P. and S., I suppose?

A. Yes, sir.

Q. What commodities, can you tell me that?

A. Canned goods.

Q. In January of 1953?

A. Canned goods ran very heavy.

Q. In March of 1953 you received 238.

Mr. Rockwood: What month?

Mr. Cockrum: March.

Mr. Rockwood: Thank you.

By Mr. Cockrum:

Q. What were the commodities during the month of March?

A. The same thing, perishable freight, surely. But I think canned goods during that period from October 15 to April 15, while the perishable protective tariff is in effect, that the demand for refrigerator cars for canned goods is quite heavy.

Q. Are there any principal stations on the S. P. and S. at [fol. 3110] which that demand predominates?

A. Oh, that would be hard to say unless we made a check of it.

Q. All right.

A. We have a number of stations with canned goods loaded that is rather heavy.

Q. Those are of fruits and vegetables produced in the S. P. and S. territory and shipped out as canned goods, is that right?

A. That is right, yes, sir.

Q. Let's turn over to September when you received 240 cars. What were the commodities shipped outbound in those during the month of September?

A. Well, in September the potato movement starts. That's in the central Oregon territory. And that would continue on through, also, to during this canned goods loading period and runs rather heavy. But in September the biggest items, I would say, would be the canned goods and the potatoes.

Q. November, when you had 257 reefers?

A. The same thing.

Q. The same thing there?

A. Yes, sir.

Q. Would there be any of that traffic moving outbound in reefers, consisting of the fresh fruits and vegetables, other than potatoes?

A. When? What month, September?

Q. Let's take September.

[fol. 3111] A. Oh, there would be some, but not a great number.

Q. November?

A. November, mostly the canned and the frozen.

Mr. Cockrum: That is all, Mr. Examiner.

Redirect examination.

By Mr. Rockwood:

Q. Mr. Keck, you talk about canned goods and potatoes requiring refrigerator service. Does the S. P. and S. have any frozen products that move out in refrigerator cars?

A. Oh, yes, quite a number of them.

Q. What products are frozen?

A. Oh, all kinds of vegetables and berries, and that sort of thing.

Q. Do they move in an ordinary refrigerator car or special type?

A. No, sir, special type, either heavily insulated or the mechanical type of refrigerator car that cools itself like a refrigerator does.

Q. And that is the type of car for which you showed some shortages, the mechanical or heavily insulated refrigerator?

A. Yes, sir.

Q. You made some remark as to the probability or possibility of getting some 50-foot boxes from the Southern Pacific. What was your comment on the possibility of that?

A. I said it was very unlikely that there would be any 50-foot box cars among those because the S.P. would keep them, if they had any, and they were only giving us their surplus.

[fol. 3112] Q. And 50 foot is a particularly desirable car, and you wouldn't get those from the Southern Pacific under any circumstance?

A. That is right, unless there was a mistake made. There might have been a few of them.

Q. Where do you get your 50-foot boxes?

A. From the G.N. and the N.P.

Mr. Rockwood: That is all.

OFFERS IN EVIDENCE

I offer Exhibits 59 and 60 in evidence.

Mr. Maguire: I have no objection.

Exam. Dishman: Exhibits 59 and 60 are received in evidence.

(Defendant's Exhibits Nos. 59 and 60, respectively, Witness Keck, were received in evidence.)

(Witness excused.)

Mr. Rockwood: I will call Mr. Nashland.

With Mr. Nashland I will have two exhibits which are similar in form to those just discussed by Mr. Keck, but dealing with the year 1954. The first will be "Cars Received Empty for Loading".

Exam. Dishman: That will be Exhibit No. 61.

(Defendant's Exhibit No. 61, Witness Nashland, was marked for identification.)

Mr. Rockwood: And the second will be "Statement of Cars (Empty) on Hand for Distribution".

(Defendant's Exhibit No. 62, Witness Nashland, was marked for identification.)

[fol. 3113] T. N. NASHLAND was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Will you please state your full name?
A. T. N. Nashland, N-a-s-h-l-a-n-d.
Q. And where do you live?
A. In Portland, Oregon.
Q. And by whom are you employed?
A. By the S. P. and S. Railway Company.
Q. In what capacity?
A. Supervisor of car service.

Exam. Dishman: I didn't get that.
The Witness: Supervisor of car service.

By Mr. Rockwood:

Q. How long have you worked for the S. P. and S.?
A. Since 1920.
Q. Without going into detail, tell us generally in what parts you worked.
A. Well, I was employed in the capacity of clerk in the car service department from 1920 until 1933, then I served as clerk in various capacities in the maintenance department until December 1941, when I was appointed supervisor of car service, and I was in that position until

March 1946 or when Mr. Keck returned from military service. I then was appointed chief clerk to superintendent, and held that position until June 1, 1954, when I was [fol. 3114] again appointed supervisor of car service upon retirement of Mr. Keck.

Q. And you have been in that position since Mr. Keck's retirement?

A. Since June 1, 1954.

Q. Did you from the records of the S. P. and S. prepare exhibits for the year 1954 similar to those presented by Mr. Keck for the year '53?

A. I did.

Q. Were you here in the room during the testimony of Mr. Keck who preceded you on the stand?

A. Yes, I was.

Q. He testified with respect to the source of empties for loading on the S. P. and S. and generally with respect to the manner in which your car requirements were filled. Has there been any change in the practices as he described them since you have been on the job?

A. No change in any respect.

Q. Referring to Exhibit 61, which is "Cars Received Empty for Loading", that similarly shows by months receipts from various sources as he described?

A. Yes.

Q. And, of course, this again does not include loads that came out of the line and were made empty on line and were made available for loading?

[fol. 3115] A. No, it does not.

Q. Coming down to the last page, which is a recapitulation, have you totaled arithmetically the receipts from the Great Northern of all types?

A. Yes, I have.

Q. What is the total of those four figures?

A. Ten thousand six hundred forty-five cars.

Q. And have you similarly totaled the receipts from the Northern Pacific?

A. Yes, sir.

Q. And what is the total of those?

A. Ten thousand three hundred eighty-nine cars.

Q. And 95 from the Southern Pacific?

A. Southern Pacific?

Q. In the month of November?

A. Yes.

Q. What is the total of all of those three figures?

A. Twenty-one thousand one hundred twenty-nine cars.

Q. Turn, please, to your Exhibit 62. The data of this exhibit is prepared on the same basis as that described by Mr. Keck for 1953?

A. Yes, sir.

Q. The first entry in the car shortage column is in the month of June 1954, and on one day in June you show a shortage of two refrigerators; the next day there is no [fol. 3116] shortage. What does that indicate as to the length of the delay, of the length of the shortage?

A. One day.

Q. You were able to fill it the next day?

A. The next day.

Q. The next figures that you show for shortages are in the month of November, the first entry about the 8th of the month, and then beginning on the 12th of the month and extending all the way through the month of December there are shortages in box cars. Was there any peculiar situation or circumstance developed out on your line in Oregon in that period which resulted in those shortages?

A. Yes, there was.

Q. Tell us what that was, will you?

A. At this time the steamship companies were experiencing labor difficulties, and some of the ships which normally arrive in the harbor of Portland that handle paper could not handle paper, and that placed additional orders on the railway companies, and particularly so the S. P. and S., and as a good volume of the paper that the railroads handled is moved in 50-foot box cars, and that brought about this car shortage.

Q. That was the consequence of an influx of orders for cars for paper normally moving by vessels?

Mr. Maguire—Just a moment. Counsel was pretty critical of me on the matter of leading questions, and [fol. 3117] maybe he is catching bad habits from me, but it strikes me that that is a very leading question, and I think the witness—

Mr. Rockwood: Probably it was. I have been heavily exposed.

By Mr. Rockwood:

Q. Will you explain further, if you wish, if you have any further explanation of that shortage in the months of November and December?

A. Well, when difficulties like this steamship matter came up, why, we received car orders for 50-foot box cars that we had not anticipated, and that added to our general demand for 50-foot box cars, made a day-by-day shortage, as shown on the exhibit.

Q. When did that shortage of 50's end? On this exhibit it shows shortages all the way through December. Did it extend into January at all?

A. It extended into January 1955, up to January the 6th, 1955.

Q. And after January 6, 1955, was there any further shortage of 50-foot boxes?

A. None whatever.

Q. Is there any shipper out there that normally ships by ocean vessels—I want you to name the shipper—that called on you for 50-foot boxes for paper shipments, any particular shipper?

A. Well, the primary source of paper for these oceangoing vessels is shipped by Crown Zellerbach Corporation from West Linn, Oregon, and Camas, Washington, via Western Transportation just to Portland, and it was their [fol. 3118] paper that I am quite sure in main that we were called upon to handle.

Q. And how does Crown Zellerbach normally move that paper?

A. Well, we share, the railroads share, in part of their traffic all the time, but some of it also is oceangoing.

Q. Oceangoing?

A. Yes.

Mr. Rockwood: You may cross-examine.

Cross examination.

By Mr. Maguire:

Q. I wonder if you would look at Page 11 of your Exhibit No. 62, Mr. Nashland. This footnote is a little bit hard for me to understand. You first say at the bottom of the section on the right-hand side of the page under "Car Shortage" a footnote, you first say "All 50-foot box", and then you have two stars, and that also says 50-foot box. Now, what is the difference between those two or are they, both of them, necessary in there?

A. Where there are two stars only shown there were no double door boxes short on those days. Where there are three stars we were short both plain 50-foot box and a few double door box. Like, for instance, we might be short forty 50-foot box all told and four of them would be double doors.

Q. The reason for that footnote, which has no symbol in front of it, whether two stars or three stars follow the figures, they, nevertheless, all of them are 50-foot boxes?

A. They, all of them, are 50-foot boxes.

[fol. 3119] Q. I am looking at your Exhibit 62, Mr. Nashland. Let's just stick to the box car column for illustrative purposes here. I just happen to have the exhibit open here at Page 11, which is the month of November 1954. Now, opposite each of the business days in November you have certain figures as to the number of box cars, and, of course, those are all of the box cars that are on hand empty anywhere upon the S. P. and S. Railway Company, the Oregon Trunk, or the Oregon Electric?

A. Yes, sir.

Q. For example, November 1, so far as this exhibit shows to the contrary, all 470 of the box cars shown there could have been at one point, though we know, of course, they were not on one line, I should say, we know, of course, they were not, but there isn't any breakup at all in your exhibit to show upon what line or what divisions of any particular line any of these box cars were?

A. No.

Q. Now, then, your shortage figures here which persisted, started about the 12th of November and persisted all through the month of December 1954, each of those day's entries shows, for example, that on the 8th you had orders for 50-foot box cars, of which you were unable to fill 24 of them?

A. Yes, sir.

Q. And I think you may want to change this flag up here opposite the 24 because that's three stars, and it says [fol. 3120] "Includes 26 double-door 50-foot boxes. That's in November—

A. (Interrupting) You see, there are other three stars down below.

Q. I know.

A. Not only for the 5th or the 8th, it also took in the date of the 23rd and the 22nd.

Q. I understand that, but what I am trying to get at is, if you only had a shortage of 24 box cars, that shortage could not have included 26 50-foot box cars on that date, could it?

A. No.

Q. How many double door box cars were you short on the 8th?

A. This exhibit does not show it. We may have been short four double door boxes.

Q. Oh, well, now—

Mr. Rockwood: The 26 covers all the three stars.

A. That covers all the three stars on that page.

By Mr. Maguire:

Q. Just let me follow that up. I think I get the point here.

A. Yes.

Q. In other words, you had 26 car days of shortage during the month of November insofar as double door 50-foot box cars were concerned?

A. That is correct.

Q. So that out of this twenty-four it might have been three or four cars, double door cars, were missing on that [fol. 3121] particular day?

A. Yes, sir.

Q. How did you determine your car shortage figures? Do you keep a running ledger or something of the kind of unfilled orders?

A. Well, the supervisor of car service prepares a daily car report personally, Monday through Friday, and the information from the car distributors at various points on the line syphon into the office of supervisor of car service and are shown on the report so that the management will know exactly how the daily car supply stands.

Q. On these daily reports do they show the number of unfilled orders?

A. Only as it is shown here day-by-day on the exhibit.

Q. As I said, each day do they show how many cars of each type they were unable to supply?

A. Yes, sir, when there is a shortage.

Q. Yes, when there is a shortage.

A. Yes, sir.

Mr. Maguire: I think that is all. Thank you, Mr. Nashland.

Exam. Dishman: Do you have any questions, Mr. Cockrum?

By Mr. Cockrum:

Q. If I were to ask you the same questions on cross as Mr. Keck, your answers would be substantially the same?

A. Yes, sir.

[fol. 3122] Mr. Cockrum: That is all.

OFFERS IN EVIDENCE

Mr. Rockwood: I offer in evidence Exhibits 61 and 62.

Mr. Maguire: I have no objection.

Exam. Dishman: Exhibits 61 and 62 are received in evidence.

(Defendant's Exhibits Nos. 61 and 62, respectively, Witness Nashland, were received in evidence.)

Exam. Dishman: The witness is excused.

(Witness excused.)

Mr. Rockwood: I have witnesses here who will be prepared to discuss the next general subject, but I suggest that if we can adjourn now and reconvene, say, at quarter of 2, it would be more convenient.

Exam. Dishman: Yes. What subject will they discuss?

Mr. Rockwood: They are going to talk about the handling through the Spokane terminals.

Exam. Dishman: We will recess for lunch now to reconvene at 1:45.

(Whereupon, at 12:15 p.m., a recess was taken until 1:45 p.m. of the same day.)

[fol. 3123] Afternoon session.

1:45 p.m.

Exam. Dishman: The hearing will come to order, gentlemen.

Mr. Rockwood: Mr. Examiner, I will call Mr. Croffut.

I would like to have marked for identification as Exhibit No. 63, I believe—

Exam. Dishman (interrupting): Yes, 63.

Mr. Rockwood (continuing): —a map of the terminals at Spokane, Washington.

(Defendant's Exhibit No. 63, Witness Croffut, was marked for identification.)

CLARENCE F. CROFFUT was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Will you, Mr. Croffut, please state your name for the record?

A. Clarence F. Croffut.

Q. Where do you live?

A. Spokane.

Q. And you are employed by the S. P. and S.?

A. I am.

Q. In what capacity?

A. At the present time as Train Master.

Q. How long has your railroad experience been with the S. P. and S.?

[fol. 3124] A. June 1928.

Q. Over what portion of the S. P. and S. does your jurisdiction as Train Master extend at the present time?

A. From the east switch of the Wishram yard to Spokane.

Q. East switch of the Wishram yard?

A. Yes, sir.

Q. You have nothing to do with the operation of the yard at Wishram?

A. No, sir.

Q. And nothing to do with any operation of the S. P. and S. west of Wishram?

A. No, sir.

Q. Does the S. P. and S. have a regularly numbered train eastbound which arrives at the Spokane terminals sometime during the afternoon?

A. Yes, it does.

Q. What is the number of that train?

A. Well, the traffic department number is 76.

Q. And what time does that—now, let's take train 276. You have before you a copy of a map, Spokane, is that map, to your knowledge, a true picture of the terminals, the railroad terminals, in Spokane?

A. It is, sir.

Q. And the legend on the map shows the different ownerships of railroad, purple being the S. P. and S.?

[fol. 3125] A. Yes.

Q. Green being the Northern Pacific?

A. Yes.

Q. Red being the Great Northern, yellow being the Milwaukee?

A. Yes, sir.

Q. And brown being the Union Pacific, is that correct?

A. Yes, sir.

Q. What is the first point involving the Spokane terminal reached by No. 276 eastbound? What is the first station or location at which it begins to enter the terminals of Spokane?

A. The N. P. at Pasco.

Q. Well, not at Pasco, at Spokane.

A. At the connection of the Great Northern?

Q. No. Where is the connection with the Northern Pacific in Spokane, the first connection of that train entering Spokane?

A. At Marshall.

Q. That is the point located on the map at the extreme left edge of this map?

A. Yes, sir.

Q. What is the station Scribner, is that an S. P. and S. station?

A. That is an S. P. and S. station.

Q. What time does that No. 276 reach Scribner?

A. Normally about 5 p.m., between 5 and 6 p.m.

Q. Between 5 and 6?

A. Yes.

[fol. 3126] Q. What happens to that train at Scribner?

A. When that train reaches Scribner the train is made up so that they make set-out of all cars going via the N. P. and the Spokane cars and the cars that would be interchanged to the foreign roads at Spokane.

Q. The foreign roads including what roads?

A. That would include the S. I.

Q. Spokane International?

A. Spokane International, the Union Pacific and the Milwaukee.

Q. All right. Those cars, are they blocked before they reach Scribner, is that train blocked?

A. Yes, sir, the train is so blocked that the N. P. cars would be next to the engine leaving there, then the Spokane block, then the cars for interchange ahead of the caboose.

Q. All right. Now, you say those cars are cut out of the train at Scribner. What happens to the rest of the train from Scribner on?

A. The balance of the train is Great Northern cars which continues on to the Great Northern yards at Hillyard.

Q. All right. What is the junction between the S. P. and S. and the Great Northern, where is that located?

A. At Fort Wright.

Q. So designated on the map?

A. Yes, sir.

Q. From Fort Wright in to Hillyard, which is designated [fol. 3127] on the map on the right-hand side, the plaque is shown in red, who owns that railroad from Fort Wright in?

A. The Great Northern.

Q. Does the S. P. and S. train proceed over the junction at Fort Wright and over the Great Northern tracks to Hillyard?

A. That is correct.

Q. All right. At Hillyard, that is still Train No. 276?

A. Yes, sir.

Q. That runs right through to Hillyard?

A. Yes, sir.

Q. What happens to the cars in that train when that train reaches Hillyard?

A. Well, they give us a designated track—

Q. (Interrupting) Who gives you a designated track?

A. The Yard Master.

Q. At Hillyard?

A. At Hillyard.

Q. That is owned by what railroad?

A. The Great Northern.

Q. Yes. Go ahead.

A. And we pull our entire train into that track, cut our engine off and return it to the Great Northern roundhouse.

Q. Does the S. P. and S. operate that train or those cars in any other respect after its power is cut off in the process of interchange of those cars with the Great Northern?

[fol. 3128] A. No, sir.

Q. The S. P. and S.'s job is through when it cuts off the power at Hillyard?

A. That is correct.

Q. Come back to Scribner where you say the cars, Northern Pacific and the foreign-line cars, are set out, what happens to that portion of the train which was left at Scribner?

A. We have what is known as the shuttle service between Yardley and Scribner, and we pick up that train with this so-called shuttle train.

Q. Who owns that power, is that S. P. and S. power?

A. Yes, the S. P. and S. power and crews.

Q. All right. You pick up the train at Marshall and tell us what you do with it.

A. We get that train together and proceed through Marshall four and enter the Northern Pacific tracks and take that track or train right to the N. P. yard at Yardley and put it on a track designated by the Yard Master, cut our engine off, take it to the roundhouse, and the interchange is complete.

Q. Does the S. P. and S. have anything further to do with those cars after the power is cut off at Yardley?

A. Not a thing, no, sir.

Q. The interchange is complete?

A. That is right.

Q. Now, for eastbound movement, does that explain [fol. 3129] completely the operation of the S. P. and S. in the Spokane terminals?

A. That is correct.

Q. Who owns the track over which that shuttle train runs between Marshall and the Northern Pacific yard at Yardley?

A. The Northern Pacific.

Q. Now come around to a westbound movement. You receive cars, do you not, westbound from the Great Northern at Hillyard?

A. We do.

Q. What happens to those cars when they are turned over to the S. P. and S., what do you do with them?

A. The train is made up by the Great Northern, the crews are called by the Great Northern, and we start out of Hillyard and take those cars to Pasco.

Q. Does that train out of Hillyard stop at Scribner or does it go right straight through to Pasco without stopping at Scribner?

A. First 275, which is a traffic department number also, does not pick up at Scribner, but the second one and the third one or the fourth one, regardless of how many we run.

Q. So the first, No. 275, operates right out of Hillyard right straight through to Pasco without stopping in Scribner?

A. That is right.

Q. Westbound movement still, you receive westbound cars from the Northern Pacific, loads and empties at Yardley?

A. Yes, sir.

Q. And how are those cars, how does the S. P. and S. [fol. 3130] get possession of them, and what shape is the train in and what does the S. P. and S. do with them?

A. They are taken from Yardley to Scribner and picked up by one of the through trains and proceed to Pasco.

Q. That train out of Yardley, is that the line-haul train that handles them from Yardley to Scribner or some other kind of service?

A. That is the shuttle service that handles them from Yardley to Scribner.

Q. Does it stop between Yardley and Scribner to pick up any cars at any point between Yardley and Scribner?

A. Yes, sir, at Erie Street.

Q. Which is also shown on this map marked "Erie Street Yard"?

A. Yes, sir.

Q. What do you do at Erie Street and what do you get at Erie Street?

A. We get any loads that might be going via S. P. and S., empties and loads that are loaded at Spokane which might be routed via the S. P. and S.

Q. Suppose there is a Milwaukee car westbound which is to be moved by the S. P. and S. west of Scribner, where do you get those Milwaukee cars?

A. At Erie Street.

Q. Westbound?

A. Yes, sir.

[fol. 3131] Q. What about Union Pacific and Spokane International cars?

A. That would apply also.

Q. You get them at Erie?

A. Yes, sir.

Q. And local loads out of Spokane are set out at Erie and you pick them up?

A. That is right.

Q. And all of these, as I understand, are handled by the shuttle train westbound?

A. That is correct.

Q. Do the Milwaukee cars westbound get down to Yardley at all, the westbound Milwaukee cars?

A. That is something that I couldn't answer.

Q. But normally you pick up Milwaukee cars at Erie Street?

A. Yes, sir.

Q. Now, coming back to this 276, which you said arrived at Scribner between 5 and 6 o'clock in the afternoon, how long after the arrival of 276 at Scribner does it reach Hillyard?

A. I'd say normally about 45 minutes to an hour after it leaves Scribner.

Q. On this eastbound movement, after the 276 arrives at Scribner, sets out the cars for Yardley, how long after that does that shuttle service reach Yardley?

A. Our chief dispatcher puts out a call for the shuttle train in time enough so that that train reaches Scribner to [fol. 3132] make connections with 276, and I would say after the train departs from Scribner it is normally about 30 or 35 minutes getting to Yardley.

Q. Until it comes to rest in the Yardley yard?

A. That is right.

Q. And the power is cut off?

A. Yes, sir.

Q. How many trains eastbound a day does the S. P. and S. operate to Scribner and through Scribner to Hillyard and Yardley, as you have explained?

A. Anywhere from one to four trains.

Q. And on a normal day what is the most usual number of trains, you say one to four, what is the most usual number of trains?

A. I'd say about three.

Q. All right. And westbound, how many trains a day does the S. P. and S. operate from Hillyard and Yardley through Scribner on the way to Pasco?

A. Out of Hillyard off of the Great Northern we will operate anywhere from one to three trains and out of Yardley the shuttle service is called to make any connections with our eastbound trains, say, half-loads going to Yardley.

Q. And on the most usual day what is the number of trains operated by you out of Spokane, westerly out of Scribner?

A. Normally about three, I believe, would be correct.

Q. What effort is made by the S. P. and S. to coordinate [fol. 3133] the departing of No. 275 with the arrival time of Great Northern trains at Hillyard, from the east.

A. Our trains are normally called for the arrival of the Great Northern trains at Hillyard and perhaps they will allow 30 minutes difference in the time after the arrival of the Great Northern train—

Mr. Maguire (interrupting): I can't hear what the witness is saying, I am sorry.

Mr. Rockwood: Will you read that to Mr. Maguire?

(Answer read.)

By Mr. Rockwood:

Q. Thirty minutes between the time of the arrival of the Great Northern train and the departure of the S. P. and S. train?

A. Just a minute, Mr. Rockwood. They call their crews for the arrival and as a rule they call our crews for the arrival of their connections, but once in awhile they will set our call back 30 minutes back of their call, 20 to 30 minutes.

Q. Allowing a thirty-minute interval there in the terminal?

A. That is right.

Q. Generally what is the elapsed time, then, between the arrival of an eastbound Great Northern train into Hillyard and the departure of an S. P. and S. train out of Hillyard for the west—

Mr. Torinus (interrupting): You mean westbound Great Northern.

Mr. Rockwood: Did I misspeak?

[fol. 3134] By Mr. Rockwood (continuing):

Q. —arrival in Hillyard of a westbound Great Northern train and the departure out of Hillyard of a westbound S. P. and S. train?

A. Normally I would say about one hour.

Q. Approximately how many trains of the Great Northern operate westbound into Hillyard with which you make meets, I will call it, as you have described, with an S. P. and S. train westbound, how many trains of the Great Northern run into that yard each day that are handled in that way?

A. Do you mean, Mr. Rockwood, the connections that we make with the Great Northern trains?

Q. That is right.

A. Two and three.

Q. You mean two or three a day?

A. Yes.

Q. Do you handle any Northern Pacific westbound loads, that is, loads that have come into Spokane over the Northern Pacific from the east out of Yardley or do you pick them up at some other place?

A. Those loads would be picked up at Pasco unless the car was billed to Spokane via the S. P. and S.

Q. Unless it was specifically billed?

A. Specifically billed to Spokane in care of the S. P. and S., then we would handle it.

Q. Usually, though, you get your Northern Pacific cars at Pasco?

[fol. 3135] A. That is correct.

Q. The Northern Pacific trains westbound carry the cars straight through Pasco?

A. Yes, sir.

Q. At Pasco who owns the yard into which the S. P. and S. operates?

A. The Northern Pacific.

Q. Who supervises the operation of that yard?

A. The Northern Pacific.

Q. Tell us what is done in the way of coordination of train movement of Northern Pacific trains westbound into Pasco and S. P. and S. trains westbound out of Pasco hauling Northern Pacific cars, how do you coordinate those movements?

A. In the same manner in which it is done at Hillyard.

Q. Just tell us specifically what you do at Pasco.

A. The crews are called to connect with their trains, they make up our train and we proceed from there with it.

Q. The Northern Pacific makes up your train?

A. Yes, sir.

Mr. Rockwood: That is all the direct examination I have of Croffut. You may cross-examine.

Cross examination.

By Mr. Maguire:

Q. Mr. Croffut, on your eastbound business the cars for further handling by all lines other than the Northern Pacific or Great Northern are turned over to the Northern [fol. 3136] Pacific at Scribner?

A. No, sir. They are turned over to the Northern Pacific in the Northern Pacific yard at Yardley.

Q. Oh, that's right. And that is an S. P. and S. engine and crew that brings them into Yardley, is that it?

A. That is correct.

Q. Do you ever leave cars for the Milwaukee, for example, at the Erie Street yard of the Northern Pacific?

A. We take everything into Yardley, Mr. Maguire.

Q. And then the Northern Pacific distributes from there, is that it?

A. Yes, sir.

Q. You have a contract with the Northern Pacific whereby as the agent of the S. P. and S. they perform the switching in Spokane, haven't you?

A. Yes; we have no crews in Spokane whatsoever in any of the yards.

Q. And your answer to my question was "yes" as to the contract?

A. That's right.

Q. Are these cars upon arrival of your 276, train 276, at Scribner, are those cars already blocked out as between Northern Pacific outbound, your local Spokane business, and your so-called foreign lines, Spokane interchange?

A. Yes, sir.

Q. Where are they blocked out, where is that work performed?

[fol. 3137] A. That work is performed in the Wishram yard.

Q. And that is done on the Columbia River, isn't it?

A. That is right.

Q. Is that same work performed so far as your cars destined for further handling by the Great Northern in line-haul business?

A. Yes, sir.

Q. That is blocked out of Hillyard as well?

A. Yes.

Q. Will you repeat again just—I don't follow you very closely, I am afraid—about what is done at Scribner where your different blocks are located on your train when you get in there on 276?

A. When we make the set-out at Scribner the N. P. cars going east via the N. P. would be next to the engine, and then would be the city block.

Q. Those are cars for delivery in Spokane?

A. In Spokane. And then would come the cars which would be interchanged to the Union Pacific, Milwaukee, or the Spokane International.

Q. And are they blocked, those so-called foreign-line cars, are they blocked as between foreign railroads, in other words, do you have the Union Pacific cars in one block, Milwaukee in another?

A. No, we do not.

Q. Spokane International?

A. No.

[fol. 3138] Q. They are just throwed in?

A. They are all in one piece.

Q. In one piece?

A. Yes.

Q. And you do not block those at Wishram, then, the way you do the cars for the Northern Pacific, Great Northern, and for S. P. and S. local delivery in Spokane?

A. No, sir.

Mr. Maguire: I think that is all. Thank you.

Redirect examination.

By Mr. Rockwood:

Q. You testified that Milwaukee, Union Pacific, and Spokane International cars were placed at Erie Street and were picked up by the S. P. and S. shuttle train when they were moving westbound. Mr. Maguire asked you whether you set out the Milwaukee cars at Erie Street in your eastbound shuttle service and you answered "no". Is there any physical reason why that is not done?

A. Yes. The layout of the tracks at that point is such that we cannot set out there.

Q. On that eastbound movement, is that a double-track line through there, that Northern Pacific line?

A. Yes, sir, it is.

Q. On which track of the double track is the eastbound movement conducted, southerly track or the northerly track?

A. It would be the right-hand track going into Spokane, [fol. 3139] which would be the south side.

Q. The southerly track?

A. The southerly track.

Q. And the shuttle service on the westbound movement out of Yardley to Scribner, on which of the double tracks is that carried on, which of the two tracks?

A. That would be on the northbound.

Q. On the northerly of those two tracks?

A. Yes, sir.

Q. Is there a cross-over or connection between the northerly track and Erie Street yard?

A. No, sir.

Q. The northbound track, the westbound?

A. No, sir.

Q. How do you get the cars out of Erie Street on a westbound movement?

A. On going west, Mr. Rockwood, the Erie Street yard is on the right-hand side so we can back right in.

Q. There is a connection between that westbound track and the Erie Street yard?

A. Yes; I misunderstand you.

Q. Is there a connection between the southbound track and the Erie Street yard?

Mr. Maguire: You mean the southbound track?

By Mr. Rockwood:

Q. The southerly track, which is the eastbound track [fol. 3140] and the Erie Street yard?

A. No, sir.

Q. If you tried to get into the Erie Street yard with a train moving eastbound, what interference would you run into with other trackage in the vicinity, would you cross over Milwaukee, Union Pacific tracks, or what?

A. In a case of that kind we would have to cross over through the Union Pacific interlocking plant, which is east, eastward, of the yard itself.

Q. If you tried to do that, what would be the consequence so far as the Union Pacific's operation is concerned?

A. Well, I am afraid it would delay them considerably.

Q. And that is why you don't do it?

A. That is correct.

Mr. Rockwood: That is all I have.

Recross examination.

By Mr. Maguire:

Q. Aside from all that, even though you had physical access, if you have your cars for interchange with other lines all mixed in in miscellaneous fashion, you'd have to sort out those cars, anyway, at Erie Street, wouldn't you, in order to get them placed for the Milwaukee?

A. Yes, sir.

Q. Is there any particular reason why you do not separate your foreign-line cars into separate blocks at Wishram in the same manner that you do your Spokane local [fol. 3141] and your Northern Pacific and your Great Northern?

A. Well, when those cars arrive at Yardley—

Q. (Interrupting) I am talking about at Wishram, on your eastbound movement, before you ever get up to Yardley. Do you understand my question?

A. I don't believe I did, Mr. Maguire.

Q. You said that you block out your train partially at Wishram, don't you?

A. Yes, sir.

Q. Is there any reason why you do not set all your Milwaukee cars or your Union Pacific and all your S. I. cars in separate blocks at Wishram the same as you do with the Northern Pacific, Great Northern, and Spokane local business?

A. Well, the reason for doing that is that the cars would all have to be segregated after they arrived at Yardley to go to different tracks, anyway.

Q. Your different blocks would have to be cut off and handled, but, at least, you wouldn't have to assemble them into blocks of cars at Yardley, would you, if it was already done at Wishram?

A. No, that is correct.

Q. Is there any particular reason that you know of why you don't block them at Wishram, block them out at Wishram, except that you have never done it?

A. That's correct, we've never done it.

[fol. 3142] Q. You say one of the reasons why you do not drop off Milwaukee cars at the Erie Street yard where they are eventually brought by the Northern Pacific is that there are no cross-overs or track connections through from the southerly track, which is the eastbound track, over into the Erie Street yard?

A. That is correct, except at the O. W. tour.

Q. Does that O. W. tour show on the map here?

A. Yes, it does.

Q. Aren't there cross-over tracks at the easterly end or near the westerly end of the Erie Street yard—

Mr. Rockwood (interrupting): You mean from the eastbound track?

Mr. Maguire: Yes.

By Mr. Maguire (continuing):

Q. —so that you can get physical access into the yard?

A. There might be at the passenger depot, in the vicinity of the passenger depot.

Q. But, of course, the real reason why you don't go in there is that your cars are not blocked out, anyway, for the Milwaukee, even if you had cross-overs and could physically operate in there practicably, regardless of that fact, if your Milwaukee cars aren't in separate blocks you can't possibly drop them off at the Erie Street yard without switching the whole train, isn't that true?

A. Yes.

[fol. 3143] Q. Is there any physical possibility or difficulty in connection with the blocking out of so-called foreign cars eastbound at Wishram? Is there any physical reason why you can't do that?

A. The only reason that it has never been done—

Q. (Interrupting) But physically, so far as your track layout and so forth is concerned, it could be done, if you wanted to start it, couldn't it?

A. That's right.

Mr. Maguire: That is all.

Further redirect examination.

By Mr. Rockwood:

Q. Who operates the Erie Street yard?

A. The Northern Pacific.

Q. You have nothing to do with that operation?

A. No, sir.

OFFER IN EVIDENCE

Mr. Rockwood: That is all. I offer Exhibit No. 63 in evidence.

Mr. Maguire: No objection.

Exam. Dishman: The exhibit is received.

(Defendant's Exhibit No. 63, Witness Croffut, was received in evidence.)

Further recross examination.

By Mr. Maguire:

Q. Do you have any operating rights in the Erie Street yard, the S. P. and S.?

A. Not that I know of.

Mr. Maguire: I think I will ask the Northern Pacific man.

[fol. 3144] Mr. Rockwood: That is all, Mr. Croffut.

Exam. Dishman: The witness is excused.

(Witness excused.)

[fol. 3145] Mr. Rockwood: I will call Mr. Slorah.

GEORGE L. SLORAH was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Will you please state your full name for the reporter, Mr. Slorah?

A. George L. Slorah.

Q. Where do you live?

A. At Spokane, Washington.

Q. By what company are you employed?

A. Northern Pacific Railway Company.

Q. What is your position with the Northern Pacific?

A. Presently superintendent of the Idaho Division.

Q. What is the extent of the Idaho Division of the Northern Pacific?

A. Paradise, Montana, westwardly to Yakima, Washington.

Q. And where are the division headquarters located?

A. At Spokane.

Q. How long have you been engaged in railroad work in the vicinity of Spokane?

A. I have worked in and out of Spokane a little over 39 years.

Q. You have examined this terminal map which has

been received in evidence as Exhibit No. 63 and are familiar with it, are you not?

A. Yes, sir.

Q. You were here during the testimony of Mr. Croffut, who preceded you on the stand, were you not?

[fol. 3146] A. Yes, sir.

Q. And you heard him describe the operation by the S. P. and S. bringing cars eastbound into Yardley and tag cars westbound out of Yardley, you heard that testimony?

A. Yes, sir.

Q. On this 276 train that he talks about, after the train, the S. P. and S. train, shuttle, arrives at Yardley, what is done with those cars by the Northern Pacific?

A. They are received in interchange, the through cars, and are completely switched in the same manner that other Northern Pacific trains and cars are switched.

Q. What happens to the Northern Pacific cars that are destined to move eastbound over the Northern Pacific out of Spokane?

A. They are interchanged and added to our through trains or trains that are made up at Yardley for the east.

Q. Is there a manifest or symbol train of the Northern Pacific scheduled to leave Yardley eastbound sometime after the arrival of these cars out of 276?

A. Yes. We have two trains that are symboled for traffic department purposes, No. 602, and No. 612.

Q. What time does the first of those No. 602 get out of Yardley eastbound?

A. Normally from 7:30 to 9:30 in the evening, the actual schedule time is 9:15.

Q. These trains that arrive on the S. P. and S. are they [fol. 3147] in time to make the departure time of No. 602?

A. Generally, yes.

Q. How many trains does the Northern Pacific handle eastbound out of Yardley each day which are available for the handling of S. P. and S. cars west of Spokane?

A. We will operate not less than three and from that to as many as seven trains.

Q. Mr. Croffut stated that those cars coming into Yardley from the S. P. and S. were blocked in three packages, one the Northern Pacific cars eastbound, one Spokane

local cars, and the other the Northern Line cars. What is the approximate volume of the cars which arrive over the S. P. and S. which are to be interchanged with Northern Lines, including the Milwaukee, the Union Pacific, and Spokane International?

A. Oh, that would be an approximate guess on my part. I have checked some of the lists of their trains that didn't indicate a car for foreign line transfer. It is rarely that they exceed over three or four cars per train.

Q. Three or four cars per train to deliver to all of the foreign lines?

A. That is right.

Q. Do you see any advantage in trying to block cars that do not exceed that in number at Wishram for further handling by you at Yardley?

A. No; there would be no advantage whatsoever due to [fol. 3148] the set-up of the transfer tracks of the three foreign lines, namely, the Spokane International, the Union Pacific, and the Milwaukee. These three tracks are adjacent to each other, and in view of the volume of these cars it would simply mean shoving each line's cars into its individual delivery track, and that is accomplished in just as expeditious a manner as it could be in view of the volume.

Q. These foreign line cars have arrived at Yardley. What railroad handles the interchange of those cars with the three foreign lines, the S. I., U. P. and Milwaukee?

A. The Northern Pacific.

Q. What do you do with these cars, these foreign line cars, after they arrive at Yardley?

A. The foreign line cars and the city cars are placed in a gathering or hold track together with similar cars arriving in Northern Pacific trains, and at frequent intervals those cars are gathered up and moved to the Erie Street yard, which is our downtown yard, and at that yard they are broken up and distributed around to the various industries or other tracks.

Q. The Erie Street yard is designated on this map by that name, is it not? That is the location of the Erie Street yard?

A. Yes, sir.

Q. Now, for Milwaukee cars in particular, after the Milwaukee cars are picked out in the Erie Street yard, what do you do with them?

[fol. 3149] A. They are moved to the Milwaukee transfer.

Q. Can you tell us where that Milwaukee transfer is located on this map?

A. It is located in the group of tracks over which the letter "A" rests.

Q. That is the interchange point with the Milwaukee?

A. That's right.

Q. The Northern Pacific moves the cars from Erie Street to that Milwaukee interchange track, is that right?

A. That is right.

Q. Then what happens to the cars insofar as movement by the Milwaukee is concerned and insofar as you have observed that movement, what happens next?

A. They have a yard engine that removes them from the transfer over into their city yard, that normal movement is in the vicinity of Division Street.

Q. Can you locate that point on this map?

A. Division Street is just to the right of the letter "E", and, of course, the Milwaukee trackage is indicated in yellow.

Q. Does the Milwaukee move those cars from a point down to the trackage designated as "E", do they do that, if they are destined for movement eastbound?

A. I would say that is the general operation. There might be some degree of variance where they would move them.

Q. Do you know what train service moves those cars [fol. 3150] out of Spokane, what Milwaukee train service?

A. They generally have a train that departs shortly after 11 p.m. that handles the cars eastward.

Q. And where does that train run?

A. Well, now, I believe that that particular train runs between Spokane and Avery. However, it is a conjecture on my part. I understand sometimes they might terminate it at—

Mr. Maguire (interrupting): Just a moment. I don't believe, Mr. Examiner—

By Mr. Rockwood:

Q. (Interrupting) Did you read the testimony of Mr. Crippen, or did you refer to the testimony of Mr. Crippen, who testified last November in Chicago?

A. No, I did not.

Q. Geographically, where is Plummer located with respect to Spokane and Avery?

A. Approximately 40 miles east of Spokane.

Q. These cars from 276 on the S. P. and S. get into Yardley, as Mr. Croffut has testified, around 6 o'clock or thereabouts in the afternoon, 6 or 6:30. When are the foreign line cars moved by the Northern Pacific to the Erie Street yard?

A. Well, as I stated, these cars are all placed in a hold track until a certain number are gathered up. If a S. P. and S. train arrived at 6 o'clock, normally they would reach Erie Street between 10 and 11 o'clock that evening.

Q. On cars that are interchanged with the Milwaukee [fol. 3151] that so arrive at Erie Street between 10 and 11 in the evening, what time are they placed on the Milwaukee interchange track?

A. Well, it takes a certain amount of time to switch and break up those cuts. I would say they average between 1 and 3 a.m. in the morning.

Q. The day following the date of arrival?

A. That is right.

Q. Are you personally familiar with the fact as to time of the departure of the Milwaukee train out of Spokane that would move those cars? You said, I think around 11 to 11:30 at night. That's a matter of your personal knowledge?

A. To this extent, that occasionally we might have a certain hot car of our own business, perishable load or stock load or something like that, and we will inquire of the Milwaukee what time we have to have that on the transfer to move in this train toward Avery, and the information will be given us that they will leave at 11 or 11:30, and if we have it on the transfer by 11 o'clock we will make the connection.

Q. Do you know whether there is any train, whether they operate more than one train a day, do you know, out of Spokane, in the direction of Avery?

A. I believe they operate a more or less local train out of there in the morning. It is my understanding that that is—

Mr. Maguire (interrupting): Just a moment. Mr. Examiner, I believe I would suggest that the witness be [fol. 3152] cautioned to go into only things which he knows.

Exam. Dishman: Yes, Mr. Slorah, if you will just testify only to things which you know. You said it was your understanding, can you state from your own knowledge, what you started to say?

The Witness: Well, it is my knowledge that they occasionally run an additional train in the morning. I have observed that fact.

By Mr. Rockwood:

Q. If the car is placed on the interchange after midnight of the day of arrival, then, of course, it could not make a train out of there at 11 o'clock in the evening in the direction of Avery?

Mr. Maguire: Just a minute.

Mr. Rockwood: Wait a minute I am going to ask a question.

Mr. Maguire: I move that statement of Mr. Rockwood's be stricken.

Exam. Dishman: Do you want to start over, Mr. Rockwood?

Mr. Rockwood: I think that is obvious.

Exam. Dishman: All right, let it be stricken.

By Mr. Rockwood:

Q. If the cars are not put on the interchange before 11 o'clock or the departure time of that train in the evening in the direction of Avery, how long will it be before that car will get out of Spokane by the Milwaukee in the direction of Avery?

A. In checking certain records I found that it invariably [fol. 3153] leaves at approximately 11 or 11:30 the next evening.

Q. So what is your observa ion as to the time consumed

in moving a S. P. and S. car through the Spokane terminal to get it out of town to the Milwaukee?

A. It would be in the neighborhood of 16 to 18 hours.

Q. Now, on westbound loads—so far we have been talking about eastbound loads, or on westbound cars arriving at Spokane on the Milwaukee, where is the interchange made?

A. At the same location.

Q. What was that?

A. At the same location.

Q. The interchange track which you described before, is that right?

A. Yes, the interchange located at letter "A".

Q. Who moves the cars from the interchange track to the next spot?

A. The Northern Pacific yard crews.

Q. And where do you take those cars?

A. We generally assemble them in the Erie Street yard.

Q. How do they get from the Erie Street yard into a S. P. and S. train?

A. The S. P. and S. shuttle train stops on its westward movement and picks up those cars together with any other business.

Q. Any other foreign line cars, is that right?

A. Foreign line cars or some of the Northern Pacific [fol. 3154] business. We deliver a number of empties to the S. P. and S. at the Erie Street yard as well as the Yardley yard.

Q. Is it practicable to drop off the foreign line cars out of S. P. & S. eastbound trains at the Erie Street yard as that train is proceeding to Yardley, as a matter of practical operation?

A. No, it is not a practical operation.

Q. Why not?

A. Due to the arrangement of trackage. We have a cross-over at the west end of the Erie Street yard between the eastward main track and the westward main track, but that cross-over is constructed in a reverse operation. We have a cross-over at the extreme east end of Erie Street yard, from the eastbound main track to the westbound main track, and from there into Erie Street yard,

but in operating over, in operating over that cross-over it would involve an operation over the U. P.-Milwaukee Railroad through the interlocking plant. It would be an exceedingly slow movement and would offer a considerable delay to the train performing the work in addition to other trains that might be executing the following movement.

Q. Can you give us any further information relating to the coordination of train movement eastbound and westbound of the Northern Pacific and the S. P. & S. at Portland, in addition to that on which Mr. Croffut commented, about the time of calling train crews and so forth?

[fol. 3155] A. You mentioned Portland, you didn't mean Portland?

Q. Excuse me, I meant Spokane.

A. Well, I don't believe I could enlarge on it any more than that the business is put in the manifest trains as room or tonnage will permit and any hold-over of tonnage is then assembled and run in a following section of that train. As I stated before, we run three symboled trains, and will run two and three additional sections of those trains.

Q. Is there any discrimination on the part of the Northern Pacific, I mean intentional discrimination, against the foreign lines, S. L., U. P., and the Milwaukee in the attempt to delay their cars in the movement through the terminal?

A. Oh, none whatever. They are all given identically the same handling and simultaneous handling.

Q. Is the operation of the interchange between the S. P. & S. and the Milwaukee, as you have described it, as good as it could be considering the necessities of railroading?

A. I think so. Northern Pacific business is also handled at the same time on the interchange tracks in the same manner.

Q. Your local business?

A. Yes.

Q. What is the number of your principal scheduled train westbound through Pasco?

A. 603 is the companion train, and we will run two and three sections of that train. Then we will run additional [fol. 3156] deadhead trains.

Q. What is the scheduled time of arrival of 603 in Pasco?

A. 10:20 a.m.

Q. What is the performance of that train, is it on time or ahead of time or late?

A. We started a new schedule of the 603 train in January, and up to the present time that train has been on time or ahead of time each and every day with the exception of four.

Q. And what is the most usual arrival time of that train in Pasco?

A. Anywhere from 5 a.m. to 9 a.m.

Q. You heard Mr. Croffut describe the operation of hauling S. P. & S. crews to meet that train. How long after the arrival of 603 at Pasco does the S. P. and S. train move out westbound?

A. Approximately one hour. The Northern Pacific train consumes from 25 to 35 minutes at Pasco and the S. P. & S. train will move out in the neighborhood of 30 minutes after the Northern Pacific's departure.

Q. Where is the principal point of interchange between the S. P. & S. and the Northern Pacific, at Yardley or at Pasco?

A. On through business it is at Pasco.

Q. That is the principal point?

A. Yes.

Q. There are some loads exchanged at Spokane, are there?

[fol. 3157] A. There are a few cars that are specifically routed Spokane, Portland, via the S. P. & S.

Q. So far we have been talking about freight service. Is there any coordination of passenger train service between the S. P. & S. and the Northern Pacific?

Mr. Maguire: That is objected to as not within the issues of this case.

Mr. Rockwood: As a matter of fact, this is relevant on the general subject of management or control.

Exam. Dishman: What is the purpose of the question?

Mr. Rockwood: It is relevant on the subject of management or control to show the extent to which the S. P. & S.

conforms its business practices to those dictated by the parent lines.

Mr. Maguire: Why, Mr. Examiner, regardless of management or control, any new railroads who are handling passenger service or handling cars in a through movement would have to conform their schedules, and there is no question that there are cars which are carried by the S. P. & S. from Portland up to Spokane and there turned over both to the Northern Pacific and to the Great Northern, and they receive cars similarly from the Great Northern and Northern Pacific trains westbound to go down to Portland. But the mere fact that the schedules are conformed so as to allow these cars to move through doesn't have any bearing or any indication as to who is under common management or control with whom. I don't think it has any [fol. 3158] bearing upon the case.

Mr. Rockwood: Mr. Examiner, if Mr. Maguire will modify his argument to show that that is true with respect to the S. P. & S. and Northern at Pasco and with respect to the Great Northern and S. P. & S. at Spokane, I will have no further questions.

Mr. Maguire: I am just simply saying that any two railroads, one of which carries through cars of the other, is a perfectly normal thing for them to accommodate their schedules to each other, and I don't think it has any bearing whatever to common management or control.

Exam. Dishman: Did he cite that, the witness may answer to whatever weight may be accorded it.

Have you lost the question?

The Witness: I have, yes.

By Mr. Rockwood:

Q. Tell us the extent to which, the extent, if any, I should interpose, the extent to which the passenger service of the S. P. & S. and the Northern Pacific cars are coordinated.

A. The Northern Pacific operates a westbound train from Spokane to Seattle, known as No. 5. That train carries cars and business which are interchanged to a S. P. & S. train that originates and operates between Pasco and Portland. There are two companion trains known as Northern

Pacific No. 6 and S. P. & S. No. 6 that operate eastbound. Northern Pacific No. 1—

Q. (Interrupting) What is the name of that train?

[fol. 3159] A. That is known as the Mainstreeter.

Q. Go ahead.

A. (Continuing) —connects and exchanges business with S. P. & S. No. 3, which initiates at Spokane and terminates at Portland, and they also exchange cars from Northern Pacific No. 25, the Northcoaster, with the S. P. & S. train No. 1, which is the Empire connection out of Spokane, and similar eastbound companion trains are operated in the same manner.

Mr. Rockwood: You may cross-examine.

Cross examination.

By Mr. Maguire:

Q. Mr. Slorah, the S. P. & S. has the right under contracts between that company and the Northern Pacific to pick up and set out cars at the Erie Street yard but not to perform switching operations within the yard, isn't that true?

A. That is right, yes.

Q. While we are talking about passenger service—

Mr. Maguire: —and, by the way, without waiving my objection to that testimony, Mr. Examiner—

Q. (Continuing) —the Southern Pacific, Union Pacific, North Western, Chicago and North Western, you know of the train City of San Francisco and other trains run over that route between San Francisco and Chicago, there you have coordinated service so far as handling equipment from one railroad to another and maintaining a continuous schedule, you are familiar with that in a general way, are you not?

[fol. 3160] A. I have read their itinerary of cars.

Q. And I don't suppose you know or want to testify whether the Southern Pacific and Union Pacific are under common management or control, you don't know anything about that?

A. No.

Q. But you do know, however, that those three companies do coordinate operations so as to afford continuous through service over three different railroads between two large terminals?

A. Yes.

Q. I note that you said that you do not discriminate between the foreign lines in the handling of cars to and from, interchanged to and from those lines. By that I suppose you mean you do not treat the Union Pacific any better or any worse than the Milwaukee or the Spokane International, and the same with the other two companies, is that what you meant to say?

A. That is correct, yes.

Q. And I assume that you switch or handle interchange cars with the foreign lines with the same haste and assiduous attention to performance that you do handling your own equipment?

A. That is right.

Q. I noticed here that when you want to make this Erie Street interchange with the Milwaukee, when you've got a car of your own you want to get rid of you don't have any trouble doing that, do you, when you have a so-called hot car that you want to turn over to the Milwaukee, you [fol. 3161] can make it before the Milwaukee train pulls out, can't you?

A. In that respect we do the same with the other lines, and I might add that we will deliver to the Spokane International 50 such cars to one of the Milwaukee.

Q. In other words, when you have a particular reason of your own for getting a car off your hands you don't have much trouble in making an earlier interchange, do you?

A. These cars are cars containing perishable commodities, something of that kind.

Q. Yes. When it suits the interest of the Northern Pacific to give prompter interchange service you don't have any trouble giving it, do you?

A. When it suits the convenience of the commodity. I think every railroad preferences perishable freight under any circumstances.

Q. So that it is physically possible to make an earlier interchange than you do on the Milwaukee track?

A. It is, if we want to let everything else involved in the over-all operation go and set back for that one item.

Q. You don't have any trouble in getting your cars blocked out for a very prompt movement of your own trains, do you, on eastbound movement?

A. In what respect?

Q. In getting them into the outbound train, you don't lose any time on that, do you?

[fol. 3162] A. No, generally not, no.

Q. But it takes you about six or seven hours to perform similar service—of course there is a little bit longer run to make, on a number of cars for your connections for the foreign lines, doesn't it?

A. That is due to the work involved and the characteristics involved in the interchange movement whereas the interchange movement of Northern Pacific business at Yardley is simultaneous with the arrival of the cars at that point, in other words, the entire Northern Pacific freight yard at Yardley.

Q. You stated here that the foreign cars that you get from the S. P. & S. rarely amount to more than three or four cars, so there wouldn't be much point in blocking them, in the S. P. & S. blocking them at Wishram, didn't you?

A. I did, yes.

Q. If there were an increase in volume of those foreign cars, then would the more practicable way to handle it be for those cars to be put into separate blocks at Wishram?

A. I would say so, yes, if there was a large volume.

Q. And then that would save any delay in switching those cars out of any train that comes in when they get to yard to yard, wouldn't it, because you'd have a separate block made up?

A. Well, now, that is a question that is a little bit difficult to actually say. The most practical method of handling those cars or all cars headed for the transfers or [fol. 3163] the city yard is to move them from Yardley to Erie Street. If we did otherwise it would be a special run of those particular cars in the same manner in which we would run with a car of stock or a car of perishable.

Q. Yes, but you would not have to sort out, if you had an increased number of Milwaukee cars, you would not

have to sort them out but they would be in one block, wouldn't they?

A. The sorting wouldn't be as large or voluminous, no.

Q. If you wanted to change your method of operation for any particular reasons of your own, it would be possible and practicable for the S. P. & S. to set out cars for interchange to foreign lines, drop them off at Erie Street, would it not?

A. No, it would not.

Q. And what was the reason for that?

A. Because our set-up of trackage is such that it wouldn't permit that operation.

Q. You mean the set-up of trackage within the Erie Street yard?

A. No. Involving the main line movement and the location of Erie Street yard in connection with the main line movement.

Q. It would not be possible for them just to take these few cars and have them up next to the engine and cut off the rest of your train and come up toward the east toward the letter "A" and back in across over that cross-over there and route them onto a track in Erie Street?

[fol. 3164] A. Definitely it would be possible but it would not be practicable.

Q. Would it be possible to put in a cross-over which would allow them to head in from the westerly end of the Erie Street yard?

A. Yes, that would be possible.

Q. And if there were an increase in volume of foreign cars, which would make it more to your advantage to have them dropped off by the S. P. & S. at Erie rather than taken down to Yardley, it would be a practicable thing to do, then?

A. No. We have discharged that feature as impracticable in view of the fact that for a number of years the cross-over which I described as being at the west end of Erie Street yard and in the reverse direction was laid in that position, and for operating purposes we reversed that cross-over a number of years ago and discontinued that practice.

Q. But it was done before, in the past?

A. Years ago it was done.

Mr. Maguire: That is all, thank you, Mr. Slorah.

Redirect examination.

By Mr. Rockwood:

Q. On this map, Exhibit 63, shown in green, on what track do the Northern Pacific main line freights between Puget Sound and the Twin Cities operate?

A. On the south track.

Q. The track there shown in green is the main line track [fol. 3165] of the Northern Pacific for all of its transcontinental freight, is it?

A. That is a double track.

Q. But for all your transcontinental business through Spokane—

A. That is right, yes, sir.

Q. On what tracks do your passenger trains between the Twin Cities and the Puget Sound operate?

A. They operate on the same two tracks.

Q. So this shuttle service of the S. P. & S. is on the track which is the principal track for all Northern Pacific operation eastbound and westbound through Spokane?

A. That is correct, yes.

Q. Is there frequent service on that track?

A. Pardon?

Q. Is there frequent service on those two tracks?

A. Oh, there is continuous operation.

Q. Would it be convenient to let the S. P. & S. shuttle dawdle on that track, crossing over from the southerly track to the main line track to the Erie Street yard?

Mr. Maguire: Do the Erie Street trains dawdle?

Mr. Rockwood: I said would it be good to have them dawdle, we don't dawdle.

A. No; such operation would involve a delay to the following trains.

Mr. Rockwood: Would you read that answer, please?

[fol. 3166] (Answer read.)

By Mr. Rockwood:

Q. You mean the trains which follow the S. P. & S. shuttle train?

A. That is right.

Q. And those following trains might be of what character?

A. They might be through time freights, passenger trains or local trains, general operation.

Mr. Rockwood: I have nothing further.

Mr. Maguire: There is just one question, Mr. Examiner, which is not properly cross on the redirect.

Recross-examination.

By Mr. Maguire:

Q. I would like to follow up, Mr. Slorah, on the cars which you are able to get over on the Milwaukee interchange in time for it to connect with the Milwaukee eastbound train. I think you said the considerations which dictated haste in those cases were the nature of the shipment itself, that is, whether it was perishable or not, is that right?

A. That is correct, yes, sir.

Q. All right, if a shipment under refrigeration or a perishable shipment of any kind arrived on the S. P. & S. for further movement eastbound via the Milwaukee from the S. P. & S. to, oh, let's say Butte, Montana, or to the Twin Cities via the Milwaukee, if such rates exist, would you use the same laudable haste in getting that car over to the interchange?

A. Yes. I might enlarge on that in this respect that [fol. 3167] Yardley yard knows well in advance of the movement of these cars due to telegraphing the train consists, both from the S. P. & S. and from the Northern Pacific, and at any time a movement might be close or within a short period of the departure of the Milwaukee train, our yard master or our chief dispatcher will confer with the Milwaukee people at Spokane and advise them that they have this car and the very best they can do is the transfer at such a time, and they hold the car, or hold their train to

connect it. We perform the same operation with all three railroads.

Mr. Maguire: That is all I have, thank you.

Mr. Rockwood: That is all. Thank you, Mr. Slorah.

Exam. Dishman: The witness is excused.

(Witness excused.)

Exam. Dishman: We will take a short recess.

(Short recess.)

Exam. Dishman: The hearing will be resumed, gentlemen.

Mr. Rockwood: Mr. Torinus will call the next witness.

Mr. Torinus: I will call Mr. Bassett.

You have been sworn, have you, Mr. Bassett?

Mr. Bassett: Yes, sir.

Mr. Torinus: May this exhibit which has just been distributed be identified, Mr. Examiner?

Exam. Dishman: Exhibit No. 64.

[fol. 3168] (Defendant's Exhibit No. 64, Witness Bassett, was marked for identification.)

Homer B. Bassett was sworn and testified as follows:

Direct examination.

By Mr. Torinus:

Q. Mr. Bassett, will you state your name, residence and occupation?

A. Homer B. Bassett, I reside in Seattle, Washington, and my position is assistant general superintendent transportation of the Great Northern Railway Company.

Q. And your headquarters are at Seattle, are they?

A. Yes, sir.

Q. Will you state briefly your railroad experience?

A. With the exception of one year on the S. P. & S. in 1915 and '16 I have been continuously in the employ of the Great Northern for a little over 45 years, of which the major portion has been in the operating department in

various capacities, including car service agent, freight chief clerk in the office of the general superintendent of transportation, train master, and in my present position as assistant general superintendent of transportation at Seattle.

Q. How long have you been assistant general superintendent of transportation at Seattle?

A. A little over five years.

Q. Previous to that time did you at any time hold the [fol. 3169] position as train master at Spokane?

A. Yes, sir, for around three years, 1942 to 1945.

Q. As assistant general superintendent of transportation, is it within the scope of your duties to supervise the handling of freight cars as well as the interchange of such cars to and from connecting lines?

A. Yes, sir, it is.

Q. Are you familiar, Mr. Bassett, with the manner in which freight cars are interchanged in the Spokane terminal area between the Great Northern and the S. P. & S.?

A. Yes, sir.

Q. Are you also familiar with the freight schedules of the Great Northern and the S. P. & S. on traffic moving over those lines into and out of Spokane, Washington?

A. Yes, sir.

Q. Where is the actual interchange of freight cars made at Spokane between the S. P. & S. and the Great Northern?

A. The actual interchange is made at the Great Northern's principal terminal yard in the Spokane area of Hillyard. This yard is located, as you see on the map, about four miles east of the city center of Spokane, and is approximately east of the city limits of Spokane.

Q. Hillyard is indicated on the map, Exhibit 63, which was recently introduced in evidence, is it?

A. Yes, sir.

[fol. 3170] Q. Whose yard is that, Mr. Bassett?

A. The Great Northern Railway Company's yard.

Q. Do the operating personnel of the S. P. & S. make up any trains at Hillyard?

A. No, sir.

Q. Or do they break up any trains at Hillyard?

A. No, sir. All the making up and breaking up of S. P.

& S. trains at Hillyard is performed by Great Northern crews and personnel.

Q. Do the S. P. & S. trains moving in and out of Hillyard move over the rails of the S. P. & S. or over the rails of the Great Northern?

A. The S. P. & S. main line joins the Great Northern main line at Fort Wright, indicated on the map, about seven and a half miles west of Hillyard. The S. P. & S. trains move onto the Great Northern main line at Fort Wright and terminate in Hillyard of the Great Northern.

Q. Is the specific place where the S. P. & S. and Great Northern lines join indicated on the map as S. P. & S. junction?

A. Yes, sir, at Fort Wright.

Q. Did you state, Mr. Bassett, the distance between the S. P. & S. junction with the Great Northern at Fort Wright and Hillyard?

A. Approximately seven and a half miles.

Q. Mr. Bassett, taking a typical S. P & S. scheduled [fol. 3171] freight train, for example, it is No. 276, which has been referred to by previous witnesses, does that particular train operate over the S. P. & S. to S. P. & S. junction at Fort Wright, then over the Great Northern into the Great Northern's train yard at Hillyard that you have described?

A. Yes, sir.

Q. Will you describe how the interchange is made of cars moving eastbound over the S. P. & S. to be interchanged to the Great Northern at Hillyard and are to go to points east of Spokane on the Great Northern?

A. Generally, the Great Northern yard master at Hillyard has handed up to the S. P. & S. engineer and conductor at Fort Wright a track designation in Hillyard yard where he wants this train to move into. The train proceeds up the Great Northern main line into Hillyard and proceeds on to the track indicated by G. N. yard master. The S. P. & S. engine is then cut off and moves to the roundhouse, and the Great Northern switch crews then take over and remove the S. P. & S. caboose. The train is then interchanged to the Great Northern and thereafter becomes just another Great Northern train moving through a Great Northern train route.

Q. Can you describe, Mr. Bassett, the interchange in the reverse direction from the Great Northern to the S. P. & S.?

A. Well, the interchange in the reverse direction is approximately the same. The Great Northern train moves [fol. 3172] into Hillyard, and it has loads for the S. P. & S., these loads are switched out by the Great Northern crews, the S. P. and S. train is made up by the Great Northern crews, the S. P. & S. chief dispatcher at Portland has conferred by phone and given the Great Northern yard master at Hillyard the call time for his crew in connection with the arrival of this Great Northern train, and he then performs the service, calls the crews, and sees that the caboose is put on and the train is made up ready to move out on the S. P. & S.

Q. Is there any coordination between the freight schedules of the Great Northern and the S. P. & S.?

A. Yes, the Great Northern Westcoaster No. 401—

Q. (Interrupting) That is the westbound transcontinental train?

A. Transcontinental freight train, is due to arrive at Hillyard at 5 a.m. on the present schedule, and the S. P. & S. connection No. 275 is due to depart Hillyard at 6:20 a.m.

Q. What are the scheduled arrival and departure times at Hillyard in the reverse direction eastbound?

A. S. P. & S. 276 is due into Hillyard on the published schedule at 6 p.m. and the Great Northern's Twin City, No. 402, transcontinental eastbound train, is due to leave Hillyard at 8 p.m.

Q. Has there been any recent change in the operating schedules of Great Northern's trains Nos. 401 and 402?

A. Train No. 401, the westbound train, was shortened [fol. 3173] between the Twin Cities and Hillyard approximately 18 hours and 10 minutes on January 12, 1955. There has been no corresponding change in the eastbound schedules of No. 402.

Q. When the change in the operating schedule of 401 was made, I understand that was January 12, is that right?

A. Yes, sir.

Q. Was a corresponding change made in the operating schedules of S. P. & S. train No. 275?

A. There was, and that is the time that I have quoted

before. I might add that the first train we ran on the schedule or the Great Northern ran on that schedule arrived at Hillyard about four hours and twenty minutes ahead of time, and with the exception of comparatively few instances it has been on time or ahead of time ever since the schedule was inaugurated which gives the S. P. & S. plenty of time to make the outbound movement on its schedule.

Q. Generally, Mr. Bassett, is there more than one westbound 401 which arrives in Hillyard every day?

A. Yes, sir, it will run from—of course you understand these are all sections of the original published schedule No. 401, but the Great Northern currently operates anywhere from two to four sections of that train.

Q. How do these following sections arrive in Hillyard with reference to the scheduled time of 5:50 a.m. for the first 401?

A. The Great Northern has a very good record of making [fol. 3174] up the time on the schedule if the train is, say, three hours late out of the Twin Cities and putting it into Hillyard on time on the published schedule.

Q. Is coordination made between the later sections of 401, the second and third sections, for example, and later sections of the westbound train of the S. P. & S. out of Hillyard?

A. Well, if any of the following sections are late, why, then the S. P. & S. will operate its train in connection with the first one, but if they are on time, why, they will run a connection with maybe two of the sections or three, as the case may be.

Q. I see, No. 275 may take cars westbound, leaving at its scheduled time out of the first and second and possibly third sections of 401 arriving at Hillyard, is that right?

A. Yes, sir, unless there is too big a spread in the arrival time to delay their first train.

Q. Is the interchange between the S. P. & S. and the Great Northern at Hillyard attended with any complications or is it a relatively simple operation?

A. There are no more complications involved than one involved in the movement of any Great Northern train through Hillyard yard. The train proceeds into the main train yard, and the yard master may have tonnage lined up

on a certain train yard track and removes the eastbound tonnage from the S. P. & S. train and sets it over on this or [fol. 3175] he may use the S. P. & S. train as a nucleus on which to build his eastbound train. He handles it just the same as he would if he had a Great Northern train arriving from the east picking up Spokane loads or setting out or in reverse, going west.

Q. Mr. Bassett, will you state whether or not there is a similar coordination of schedules between the Great Northern and S. P. & S. passenger trains?

A. Yes, sir, there is, exactly.

Mr. Maguire: I wish to move to strike the answer upon the same ground as I objected to similar testimony offered by the Northern Pacific.

Exam. Dishman: Your objection will be noted of record.

Mr. Maguire: Thank you.

By Mr. Torinus:

Q. Will you describe that coordination, Mr. Bassett?

A. Well, the S. P. & S. being owned by the Great Northern—

Mr. Maguire (interrupting): Just a moment. I think we are starting out in an argumentative tone here, "the S. P. & S. being owned by the Great Northern", I move that be stricken. He is asked to describe "coordination" and not argue the case.

Exam. Dishman: That is right, it will be stricken.

A. The Portland service, the direct Portland service, of the Great Northern is performed from Chicago and the Twin Cities via Spokane and the S. P. & S. to Portland. Cars move in both the Western Star and the Empire Builder.

[fol. 3176] By Mr. Torinus:

Q. Those are trains No. 3 and No. 1, respectively?

A. No. 3 and No. 1 and No. 2 and No. 4, handle cars between S. P. & S. No. 1 and No. 3 and No. 2 and No. 4 to and from the Twin Cities and Chicago.

Q. So that the record may be entirely clear, No. 3 is the

Great Northern Western Star westbound operating through cars to Portland—

Mr. Maguire (interrupting): Now, now, now, just a minute.

Mr. Torinus: I think he has already said.

Mr. Maguire: If he has already said it, just ask him and don't tell him.

Exam. Dishman: Could you just ask him what he said.

Mr. Torinus: I wanted to clear up the record, I thought this was a short way to do it.

Mr. Maguire: It is a much shorter way to do it, I will admit that.

Exam. Dishman: The witness is familiar with the train numbers.

By Mr. Torinus:

Q. Will you tell us what train No. 3 is?

A. Train No. 3 is the Western Star and operates through to Portland in conjunction with S. P. & S. train No. 3.

Q. Taking the westbound movement of train No. 3 over the Great Northern into Spokane, will you tell us whether or not it has certain cars which are assigned to Portland? [fol. 3177] A. It does have, and these cars are switched out at the Great Northern passenger station in Spokane, placed in the S. P. & S. passenger train, and moved from the Great Northern passenger station in Spokane via the S. P. & S. to Portland.

Q. Those cars in train No. 3 which are not switched out at Spokane move where?

A. Continue on to Seattle via the Great Northern.

Q. And those which are switched out at Spokane and move to Portland over the S. P. & S. move on to Portland in what length of time?

A. Oh, the total terminal time ranges from 30 minutes to 45 minutes for the interchange of the cars and the switching and making up of the passenger train.

Q. Now will you tell us what the Great Northern passenger train No. 1 is?

A. That is the Empire Builder, and it also carries through cars which set out at Spokane and are placed in

S. P. & S. train No. 1 at the Great Northern passenger station and move out through Fort Wright and over the S. P. & S. to Portland. The balance of the cars in the train continue on westward to Seattle.

Q. And within what period of time at Spokane is this terminal service rendered from the time westbound No. 1 arrives at Spokane until the time that the Portland cars in westbound No. 1 leave Spokane for Portland?

[fol. 3178] A. Oh, approximately 30 minutes, somewhere around that time.

Q. And will you describe generally for us the movement in the reverse direction, trains No. 4 and train No. 2?

A. Train No. 4 starts out of Seattle on the Great Northern and simultaneously the S. P. & S. starts its train No. 4 out of Portland. The two come into the Great Northern passenger station in Spokane, and the cars for further movement are switched out of the S. P. & S. train and placed into the Great Northern train for continuance east. Similarly the Empire Builder starts at Seattle and a similar train starts at Portland and in the same fashion they meet in Spokane and the cars for the east are switched over into the Empire Builder and continue on east.

Q. Have there been any changes in the schedules of these passenger trains operating over the Great Northern within the last, oh, say, two or three years, Mr. Bassett?

A. No, not any material change that I know of. There have been some more or less minor changes in t e Western Star but not to any great extent.

Q. At least not so far as the west end is concerned?

A. So far as the west end is concerned it has been a practice for a great many years to run through equipment by the S. P. & S., to and from the S. P. & S., I should say.

Q. I would like to call your attention to Exhibit No. 64 which has been distributed, and I will ask you to tell us what that exhibit portrays.

[fol. 3179] A. This exhibit is designed to show the principal ownership of cars most in demand in the states of Washington and Oregon. There is not on the S. P. & S., for example, too great a demand for hoppers, covered hoppers, stock cars, and so forth. The principal use made

by the S. P. & S. is of box cars, flat cars, and gondolas and refrigerator cars. Now, a separation has been made—

Q. (Interrupting) Before you get to the separation, Mr. Bassett, let me ask you this question: Does this exhibit show all types of cars owned by the Great Northern, Northern Pacific, and S. P. & S. as taken from the equipment register?

A. Yes, sir, the official railway equipment register of July 1, 1954.

Q. It shows all types of cars owned by those lines?

A. Yes, sir.

Q. And you have segregated the freight cars into various types and have further segregated the box cars into various types of box cars, is that correct?

A. Yes, sir.

Q. Will you state the reason for making this classification in line No. 2, "40 foot box, 100M Capacity", which I assume means 100,000 pound capacity, "3700 cu. or more", which I assume means 3700 cubic feet or more?

A. Yes, sir, that is correct. We found in the orders [fol. 3180] placed for equipment the greatest demand in our particular section is for this size of car, in other words, it is more or less of a car that is standard to any requirements on the Great Northern, particularly in the Northwest, and the same is true in the orders we receive from the S. P. & S. The car is more or less today what might be called a general service car: There are several different varieties of those cars. For example, the dressed lumber box for fir is somewhat differently classified from a dressed lumber box for pine lumber loading, but the general call is for cars of that dimension. In the 50-foot cars there are some pulp shippers who prefer the single-door car, that is, a car with a 6-foot door, and there are others who demand an 8-foot door but still a single door, and then there is a wide demand by plywood shippers and aluminum shippers, aluminum sheet shippers, for 50-foot double-door box, that is, cars with doors 12 feet or wider, and that is why that has been separated out to show the percentage of ownership of that particular type of car.

Q. Those cars shown on the Exhibit No. 64 are 50-foot box, single door 50-foot box cars, with doors how wide?

A. Six feet.

Q. And the wide door cars are the eight foot door cars?

A. Anywhere from seven feet up to fifteen feet.

Q. You may proceed with your explanation of the exhibit.

A. Then under refrigerators the greatest demand for [fol. 3181] the frosted foods industry, which is growing very rapidly on the Pacific Coast, is for a heavily insulated car, that is, with a car of six inch insulation, floors, sides, ceilings, and ends. In recent years the demand for mechanical cars has increased very materially on the S. P. & S. and the Great Northern, and the mechanicals are shown separate from the heavily insulated cars that are ice activated. The Great Northern itself owns none of these cars, but since the W. F. E. Company is a wholly-owned subsidiary of the Great Northern, its ownership has been shown separately. And then, as Mr. Irwin testified, the Great Northern is in an association with the Fruit Growers Express, Burlington Express and others, and has call on the ownership of those cars for assistance of protecting the business of the S. P. & S. and Great Northern. The total number of refrigerators owned by the associated companies is shown here as 18,332. The reason that differs from the figure quoted by Mr. Irwin—

Q. (Interrupting) Excuse me, Mr. Bassett. Does that 18,332 figure include the 5,721 W. F. E. cars shown on line 18?

A. Yes, sir. That is the Western Fruit Express ownership with the other companies, and it is included in the total of 18,332.

Q. I see.

A. The total ownership of the combined association is around 21,000 cars, I believe, cited by Mr. Irwin, but the Fruit Growers Express and its affiliated companies [fol. 3182] is an owner of a number of different varieties of cars, and those have been eliminated from this where they are not currently used or in demand on either the Great Northern or the S. P. & S. The Great Northern, of course, should any business originate calling for that particular type of car would also have a call upon the associated companies for assistance in protecting its re-

quirements. But at the present time the cars that have been eliminated from this report are cars which normally there is no use for on the Great Northern or the S. P. & S.

Q. I see. Do you have any further explanation to make with respect to this exhibit?

A. I don't think so.

Q. Mr. Bassett, were you here when both Mr. Irwin and Mr. Ulyatt testified?

A. Yes, sir.

Q. Mr. Maguire asked some questions of Mr. Ulyatt, as I recall it, concerning the matter of supplying cars to the C. & C., the B. C. E., and the W. I. & M. Do you know to what railroads he was referring?

A. Yes, sir.

Q. What railroads are those, Mr. Bassett?

Mr. Maguire: If you will pardon the interruption, I think I named them by name. Maybe your notes show abbreviations.

Mr. Torinus: Well, you may have, Mr. Maguire, I don't recall. I'd like to have Mr. Bassett identify them.

[fol. 3183] A. The C. & C. is the Columbia Cowlitz. The B. C. E. is the British Columbia Electric. The W. I. & M. is the Washington, Idaho and Montana.

Q. Do any of those lines, Mr. Bassett, exceed a hundred miles in length?

A. No, sir.

Q. Do you know what the operated mileage of those railroads is?

A. According to the official list, the Official Railway Equipment Register, and the Official Guide, some show in one and some show in another, the mileage shown for the C. & C. is 8.5, for the B. C. Electric 88 miles, and the Washington, Idaho and Montana's is 50 miles.

Q. Are any of those railroads so-called industrial railroads?

A. I should say that—

Mr. Maguire (Interrupting): Pardon the interruption, Mr. Bassett.

I don't believe an industrial railroad has been defined, and I think that—

Exam. Dishman (interrupting): Does the witness understand what is meant by the description "industrial railroad"?

The Witness: Yes, sir.

Exam. Dishman: Will you state it for the record?

The Witness: An industrial railroad is generally a small railroad operated separately from a large major railroad company, either by the industry itself or through [fol. 3184] other ownership, serving a particular industry or group of industries, not directly connected with any major railroad company, and frequently, as I have said, are owned by the manufacturer or the company that owns the plant they serve.

Exam. Dishman: What was the question?

Mr. Torinus: I think you asked him.

Exam. Dishman: You asked him.

Mr. Torinus: I asked him if any of those three railroads named were industrial railroads.

Exam. Dishman: What is your answer to that?

A. The Columbia and Cowlitz, for example, is a part of the logging line of the Weyerhaeuser Timber Company. It serves the Weyerhaeuser Lumber Mill, Plywood Mill, and Pulp Mill at Columbia Junction, Washington, and to obviate all four of the railroads operating into the mill, it receives the empty cars furnished by the four railroads joining it at Rocky Point, moves them into the mill, and any empties that are taken down are loaded at the Weyerhaeuser plants and delivered back to the trunk line carriers at Rocky Point. The only cars that are set out to any extent are for these particular industries owned by the Weyerhaeuser Company.

By Mr. Torinus:

Q. Does the Columbia and Cowlitz have any equipment of its own, Mr. Bassett?

A. Not to my knowledge. It has no commercial equipment; it has some logging equipment but to my knowledge [fol. 3185] it has no commercial equipment.

Q. How about the W. I. & M.?

A. The W. I. & M. again owns some equipment, mostly logging equipment, and to my knowledge does not have any equipment that normally would be interchanged to the other lines.

Q. Would you characterize that as an industrial railroad?

A. I believe that it is owned also by the Weyerhaeuser Company, and the principal industry that it serves is the Potlatch Mill of the Potlatch Lumber Company which, I believe, also is a Weyerhaeuser subsidiary.

Q. Did you state, Mr. Bassett, the operated mileage of those three lines respectively?

A. Yes, sir.

Q. Do those railroads, Columbia and Cowlitz, the B. C. & E., and the W. I. & M. assume per diem on cars which are interchanged.

Mr. Torinus: Strike that question, please.

Q. Do those three railroads assume per diem on foreign line cars while located on their lines, Mr. Bassett?

A. They do under separate short line agreements, as they are known, in which they have for a good many years been granted privileges, not granted to other railroad lines, in the way of reclaim but all per diem settlements made are made by the, that is, with the owners of a car, are made by the railroad company delivering the car to the short line railway. Then the short line railway [fol. 3186] makes whole any part of the per diem that it is required to pay under these short line agreements direct to the delivering carrier. In other words, if a New York Central car is delivered to the C. & C. or the W. I. & M., or the B. C. & E., those lines make no payments to the New York Central. That is taken care of by the Great Northern, and then it has its dealings with the C. & C. They are not a direct settling per diem road.

Q. Mr. Bassett, does the Great Northern, for example, supply cars to these short lines without regard to whether or not it will receive a loaded outbound movement?

A. Yes, in most cases it does. In other words, the whole operation is treated more or less like any industry would

be treated. The industry orders its cars to be delivered to these short line roads based on the requirements of the industry. Now, in some cases, for example, the British Columbia Electric. That line is permitted to store cars for a certain length of time and draw on the cars so stored, starting its per diem payments to the Great Northern, for example, the day the car is removed from storage, and then it assumes the per diem until it returns the car to the Great Northern, and in a similar manner the whole operation is just like an industry ordering cars from a switching railroad.

Q. Does it reclaim per diem, do these lines reclaim per diem from railroads which do not enjoy the outbound movement, Mr. Bassett?

[fol. 3187] A. No. If, for example, we deliver 10 cars to the B. C. E. for storage and they are kept up there, it is allowed reclaim time of eight days, and if it uses that car out over the Canadian Pacific, for example, why, naturally the Great Northern is later loath to make it whole on per diem when it did not get the load out. So the B. C. E. in particular is more or less careful about seeing that the car moves out on the carrier that delivered it in order to protect itself on per diem.

Q. A question was asked, I believe of Mr. Irwin, about the supplying of cars to the S. I. Is the S. I. a so-called per diem reporting road?

A. Yes, sir, it is.

Q. In that respect it is different from these three lines that you mentioned?

A. Yes, sir.

Q. Does the Great Northern supply cars to the S. I. for loading at all points on its line or loading for particular points on its line or just what is the situation?

A. No. It makes no attempt to furnish the S. I. cars for loading all over its system. The principal industry, so far as the Great Northern is concerned, is the Trentwood Rolling Mill of the Kaiser Aluminum & Chemical Company at Trentwood, which is, oh, in the neighborhood of eight or nine miles of the city center of Spokane. This [fol. 3188] industry will load anywhere from two hundred fifty to five or five hundred fifty cars of aluminum sheets

a month. Now, the demand by that company is for fifty-foot double door cars with some forty-foot included and some occasional orders for full-end door cars. Well, it isn't reasonable to assume that the S. I. with one hundred fifty-one miles of railroad could provide enough equipment to take care of loading of that volume from a plant transcontinentally all over the United States, so the Great Northern has agreed to supply its share where it enjoys the outbound haul from Spokane, and the industry places its order with the S. I., and if the S. I. has equipment of its own it may order ten cars from the Great Northern, if it happens to have some fifty-foot of its own that it has no other orders for, apply those that have been received on its own railroad, just like any other railroad would do, except it does call on the Great Northern to make up the deficit for the outbound Great Northern haul.

Q. In calling for cars, then, from the Great Northern, does the S. I. specify for what industry they are to be supplied?

A. Yes, sir, and the size and dimension of car wanted.

Q. And in those cases where the Great Northern furnishes cars for the industry at Trentwood, how much of a haul does the S. I. get on those cars?

A. Well, it just gets the short haul, eight or nine miles from Trentwood to the Great Northern at Spokane.

[fol. 3189] Q. Would you characterize, Mr. Bassett, the Great Northern furnishing of cars to the S. P. and S. system as similar to or different from its manner of supplying cars to the S. I.?

A. Oh, no, it is no way comparable at all. After the Great Northern delivers the cars to the S. P. and S. they are no longer in their control. The S. P. and S. has an organization of its own. It places what may be characterized and what we know as a "C. S. D." order for 40-foot box cars daily—

Exam. Dishman (interrupting): What order is that?

The Witness: Sir?

Exam. Dishman: You mentioned a type of order.

The Witness: It is an order of the car services which places it with the Great Northern for a daily delivery.

A. (Continuing) —he may place an order with the Great Northern for 40 40-foot box cars daily, and that continues in effect maybe for a year until his requirements get down to where he might change the order, he might abrogate the order, or he might reduce it or he might increase it. He does the same thing with 50-foot cars, with flat cars, with refrigerators, with gondolas, and then any special types of equipment that are required by certain industries such as 65-foot gondolas, if he has orders for those and has none available he calls on the Great Northern to supply that type of car for the outbound movement which the Great Northern will receive at Spokane or Hillyard.

[fol. 3190] By Mr. Torinus:

Q. Does the S. P. & S. call on the Great Northern for cars specified, whether or not those cars are for particular industries?

A. No, sir, there is no specification of industries. Those are size directed by S. P. & S. on the car orders placed with the S. P. & S. by the various shippers in its territory.

Q. Now I would like to ask you one or two questions on another subject. This has to do with the handling by the Great Northern of eastbound shipments of forest products. Can you tell us what trains the Great Northern handles those shipments?

A. As I said before, the Great Northern has what we call a symbol freight train, by that it operates a schedule which is the most convenient for all shipments moving under a number, train 401, all cars and all movements of that train are reported to a central point under what we call a symboling system. A symbol is given to the waybill accompanying the car at the originating point or the nearest symboling terminal to that point and that is carried by wire so that all movements are recorded in St. Paul of the cars in that train. Any car number originating anywhere on the Great Northern System is placed in sections of that train or in that train just exactly the same as any other load is. There is no difference in the handling.

Q. And the symbol train which the Great Northern operates eastbound from the Pacific Coast is designated 402, [fol. 3191] isn't that correct?

A. 402, yes, sir.

Q. Then can you tell us whether or not the Great Northern has any so-called slow route for lumber shipments?

A. No, sir, it has none to my knowledge.

Q. If any cars of lumber are billed out in the Pacific Coast area by shippers, which are in the nature of transit cars, and by the term "transit cars" I mean cars which may not be sold and may be consigned to a particular point for diversion, if any such cars are billed out, in what trains of the Great Northern would those cars be handled?

A. In exactly the same through trains that any other shipments are handled. It makes no difference. If we have a car of lumber, for example, that is billed to a firm at Minnesota Transfer for reconsignment or diversion it is handled in the first available through train irrespective of the diversion or reconsignment provision on the waybill.

Q. Now, I have one or two questions, Mr. Bassett, about the movement of hogs out of Sioux Falls, South Dakota. Do you know whether or not the Great Northern regularly handles hogs out of South Dakota for westbound movement, out of Sioux Falls, South Dakota?

A. Yes, sir.

Q. To Portland, Oregon?

A. Yes, sir.

[fol. 3192] Q. Can you tell us over what route those shipments move and what the service is?

A. Well, I don't know whether I could tell the service, except in the general exchange of information between transportation departments of various railroads as to the schedules the cars might take. Now, the Great Northern itself has a route from Sioux Falls to Willmar and west. It also has a route by which the principal movement of hogs takes place to the C. B. & Q. at Sioux City, and the Union Pacific to Portland—

Q. (Interrupting) Excuse me, Mr. Bassett. My question had reference to the route over which the hogs are now moving.

A. They are moving via Sioux City.

Q. Will you tell us what that route is out of Sioux Falls to Portland?

A. The Great Northern has a train that leaves Sioux Falls, it is scheduled to leave Sioux Falls at 5 p.m., and is due in Sioux City at 9:30 p.m. The hogs that move that way are delivered to the Burlington, and from the exchange of information currently the C. B. & Q. regularly leaves there around 11 p.m. and delivers the cars to the Union Pacific at Fremont.

Q. Fremont, Nebraska?

A. Nebraska. The Union Pacific attempts to make Cheyenne, Wyoming, for the first stop for water, or for feed, water and rest, or whatever the case may be, if it doesn't make Cheyenne then it feeds and waters and rests [fol. 3193] them at Sidney, Nebraska. Then the second feed is at either Hinkle, Oregon, or Pocatello, Idaho, but the information that has been given us by our connections is that they make a two-feed run from Sioux Falls to Portland via that route.

Q. Did you make an investigation, Mr. Bassett, to determine whether or not there is now regular movement of hogs via that route?

A. Well, I did get some figures for January and February. For the month of January there were 20 cars moved that way to Portland, and for February there were 14 cars.

Exam. Dishman: Is that for this year?

The Witness: For this year, excuse me, 1955.

Mr. Torinus: You may cross-examine, Mr. Maguire.

Cross-examination.

By Mr. Maguire:

Q. Let's look at your Exhibit No. 64, Mr. Bassett. I'd like to direct your attention to footnote No. 2, which refers to the heading "Associated Companies". If my memory is correct—what associated refrigerator companies are they?

A. The Fruit Growers Express, The Burlington Refrigerator Express.

Q. Then referring over to column "F", line 23, those

are refrigerators, that is, heavily insulated mechanical, heavily insulated, ice, and all other refrigerator cars obtained or obtainable from the U. R. T., is that right?

[fol. 3194] A. Yes, sir.

Q. And is that the entire resources of the U. R. T.?

A. I have no knowledge of the resources of the U. R. T. Company.

Q. Yes, I didn't quite understand where you got, from what source you got the 3,855.

A. Sir, I have used that figure not knowing the dealings of private car companies. Now, it is possible that the U. R. T., quite possible that the U. R. T. Company may have some other company with which it works upon which it could call for refrigerators, but I have no knowledge of that. The only knowledge I have is that the Milwaukee uses U. R. T. cars, U. R. T. equipment.

Q. What I am getting at is where did you get the figure 3,855?

A. From the equipment register.

Q. Is that the total ownership of the U. R. T. in refrigerator cars of these classes?

A. That was my understanding, yes, sir.

Q. Do you know whether the Milwaukee has no other source of car supply, refrigerator supply?

A. No, sir, I do not.

Q. If you don't know anything one way or the other, I won't know whether you know such and such is not the case, because you will still say you don't know?

A. I don't know, yes, sir.

Q. O. K., we will just pass that up.

[fol. 3195] Now, the B. C. Electric Company, the British Columbia Electric Company, let's get over to that for a minute.

A. Yes, sir.

Q. You didn't characterize that as an industrial line, did you?

A. It is to this extent, it serves a large number of industries, not to the exclusion of others such as perhaps we will say the Weyerhaeuser roads, but it also serves large industry at Marpole, Lulu Island, New Westminster, and other sections in that portion of Canada.

Q. What you mean is that it has a lot of customers, don't you?

A. Well, yes, it has a lot—it is a short line railroad that has a lot of customers, you are right.

Q. And it isn't hooked up with any one industry to the preference or to the exclusion of others either, is it?

A. No, sir.

Q. And as a matter of fact, what you would call it is a prosperous short line railroad with a lot of business to it?

A. Yes, sir, I would say that.

Q. Now, I notice that you stated that Potlatch Lumber Company was a Weyerhaeuser subsidiary. Are you talking about Potlatch Forests, Inc.?

A. Now, so far as I know. I don't know too much about the ownership. Potlatch Forests, Inc., is somehow affiliated with the Weyerhaeuser Company, I may be mistaken.

Q. That is, again it won't do me any good to tell you [fol. 3196] you are wrong, so we will drop that.

A. But the mill is the principal industry on that railroad, wherever the ownership is vested.

Q. What does the S. P. & S. do about paying per diem on foreign cars on its line, on anybody else's line or on its line?

A. It makes the settlements with the owner.

Q. Let's use for example the New York Central car. On its line it settles with the New York Central?

A. Yes, sir.

Q. If it gets a Great Northern car on its line it settles with the Great Northern?

A. Yes, sir.

Q. It makes the same kind of settlement with the G. N. as it does with the New York Central?

A. That is correct.

Q. There was a very brief digression that Mr. Torinus took you on with regard to the movement of forest products. The only route you have to the east is not the route through Spokane, Great Northern to the Twin Cities, is it, by any means?

A. I don't quite understand what you mean, Mr. Maguire, by that.

Q. Well, let me ask you this: Your symbol trains, 402, I believe was one of the examples you used, was it?

A. Yes, sir.

Q. It starts at Seattle, does it not?

[fol. 3197] A. Yes, sir.

Q. And then runs through to the Twin Cities?

A. Yes, sir.

Q. You have routings on lumber on the Oregon Electric, the S. P. & S. System to Portland, or Vancouver, as the case may be, Great Northern to Seattle, well, Great Northern all the rest of the way, via Seattle, that is one routing of the lumber, isn't it?

A. Yes, sir.

Q. And that is a more circuitous route, is it not, than the route through S. P. & S. to Portland or S. P. & S. System to Spokane thence Great Northern, is it not, so far as distance is concerned?

A. As far as distance is concerned it crosses a mountain range where S. P. & S. goes direct on a water grade line.

Q. And as the crow flies it is the longer distance?

A. Yes.

Q. Or going around the two sides of a triangle?

A. Yes, sir.

Q. This symbol train does not get into this timber? Lumber doesn't get into the symbol train that you are talking about?

A. No lumber moves that way.

Q. There is a route open?

A. There is a route open but there is no lumber that moves, to my knowledge.

[fol. 3198] Q. You mean you don't know or you know there isn't any?

A. The number of cars is so minor that it has never come to my attention.

Q. You also have a route with through rates off the Oregon Electric out of the Willamette Valley, thence Great Northern down the Klamath Falls line to Bieber and the Western Pacific to the east?

A. Yes, sir.

Q. And those routes go so far as to Minnesota Transfer, do they not, that is, you can get to Minnesota Transfer over that route with a lumber shipment?

A. I am not cognizant with the tariff but I believe there is a route through that that complies with the tariff. That is just a personal observation because I don't know too much about tariffs.

Q. I think it would probably be unfair to ask you the distance over that route, wouldn't it? You wouldn't know that offhand?

A. I wouldn't know because there are a lot of variations in how a car can move, it might move over the Rio Grande, C. B. & Q. or Illinois Central or some other way. I haven't paid much attention to that.

Q. I think you stated that after the S. P. & S. get a car, for example, from the Great Northern, the Great Northern has no further control over that car?

[fol. 3199] A. That is correct.

Q. And from your apparent knowledge of the affairs of all three companies insofar as they involve the S. P. & S. that would be true as to the Northern Pacific, wouldn't it?

A. Yes, sir.

Q. There are other arrangements so far as this passenger service is concerned. There are arrangements for transfer of equipment from one train to another between utterly disassociated railroads all over the country, aren't there?

A. Yes, sir.

Q. As, for example, the trains which leave San Francisco on the Southern Pacific and then on the Union Pacific, and then on the North Western into Chicago, that would be one example, wouldn't it?

A. Yes, sir.

Q. And the other would be the Burlington Rocket which moves to the coast?

Mr. James: Stop, Burlington Zephyrs.

Mr. Maguire: Oh, I beg your pardon, and my apologies to you, too, Mr. Boe.

I meant to say the Burlington Zephyrs.

By Mr. Maguire:

Q. And I think there are other railroads, they have a train that goes through to San Francisco?

A. Yes, sir.

Q. What is that, the D. & R. G. W., and then the—

[fol. 3200] A. (Interrupting) Western Pacific, I believe, yes. Burlington, Rio Grande, Western Pacific, combination.

Q. Well, of course those companies aren't associated in any way, are they, except in a common enterprise?

A. Well—

Q. As to ownership?

A. As to ownership, no, so far as I know.

Q. You are not trying to raise any unworthy suspicion here?

A. The way they have changed ownership I wouldn't know from day to day which one owns which.

Q. You know who owns the Burlington, don't you?

A. I know who owns the Burlington, yes, sir, but the Rio Grande and Western Pacific I can't be too sure.

Mr. Maguire: I think that is all, Mr. Bassett.

Exam. Dishman: Anything more, Mr. Torinus?

OFFER IN EVIDENCE

Mr. Torinus: I offer in evidence Exhibit 64.

Mr. Maguire: No objection.

Exam. Dishman: Exhibit 64 is received in evidence.

(Defendant's Exhibit No. 64, Witness Bassett, was received in evidence.)

Exam. Dishman: Are there any more questions of this witness?

Mr. Torinus: I have no more questions.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Torinus: May we be off the record?

[fol. 3201] Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

We will recess until 9:30 tomorrow morning.

(Whereupon, at 4:45 p.m., an adjournment was taken until 9:30 a.m., Tuesday, April 12, 1955.)